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NATURAL GAS WELLHEAD DECONTROL ACT OF 1989

May 31 (legislative day, January 3), 1989.—Ordered to be printed

Mr. Johnston, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 783]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 783) to amend the Natural Gas Policy Act of 1978 to eliminate wellhead price and nonprice controls on the first sale of natural gas, and to make technical and conforming amendments to such Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

Purpose of the Measure

The purpose of S. 783 is to promote competition for natural gas at the wellhead in order to ensure consumers an adequate and reliable supply of natural gas at the lowest reasonable price. S. 783 does so by amending the Natural Gas Policy Act of 1978 [NGPA] to repeal on January 1, 1993, all remaining price and nonprice controls on the first sale (generally, the wellhead or producing field sale) of natural gas.

In certain circumstances, S. 783 also decontrols first sale transactions earlier than January 1, 1993. The bill would decontrol first sale transactions involving natural gas under expired, terminated, or post-enactment contracts, and existing contracts that are renegotiated to express the parties' mutual agreement to decontrol the subject gas.

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S. 783 takes the final step in the wellhead decontrol process by removing those price and nonprice controls that remain in place following the partial wellhead decontrol carried out under the NGPA. While a majority of domestic natural gas production is currently decontrolled, the remaining wellhead controls distort natural gas markets by providing consumers and producers with erroneous market signals. Repeal of the remaining wellhead controls will promote the unimpeded transmission of market signals from burnertip to wellhead and thereby help to ensure adequate supplies of reasonably price natural gas in the future.

BACKGROUND AND NEED

S. 783 is bipartisan legislation that represents a consensus among all segments of the natural gas industry as to the best way to accomplish the removal of the remaining price and nonprice controls on the first sale of natural gas.

S. 783 is virtually identical to H.R. 1722, the wellhead decontrol bill that was passed by the House of Representatives by voice vote on April 17, 1989, and is substantially similar to S. 625 introduced by Senators Nickles and Ford on March 16, 1989. The Committee also has reported H.R. 1722 amended to conform to S. 783. The Administration strongly supports all three measures.

By facilitating the unimpeded operation of market forces to stimulate the production of natural gas, the enactment of S. 783 will contribute to reducing our Nation's dependence upon imported oil, help to ensure the availability of clean-burning natural gas for purposes of addressing environmental problems and the need for electric generating capacity, and will eliminate the possibility of consumer price increases caused by artificial Federal constraints upon the production and allocation of natural gas supplies.

As the result of market forces set in motion by the NGPA, developments in the world oil market, and the substantial restructuring of the farmework of Federal natural gas regulation by the Federal Energy Regulatory Commission [FERC], the natural gas industry and the consuming markets served by natural gas have undergone a sea change in the past decade. These changes make it appropriate at this time to repeal the remaining price and nonprice controls on wellhead sales of natural gas as not in keeping with the evolution of natural gas markets and the regulatory environment.

1. THE NATURAL GAS POLICY ACT OF 1978

The NGPA represented a fundamental policy decision by the Congress to permit the wellhead price of a substantial portion of the Nation's natural gas production to be determined by supply and demand. To effectuate this policy decision, the NGPA mandated the phased, partial decontrol of wellhead natural gas sales. Between 1979 and 1985, the share of decontrolled gas as a percentage of total U.S. production rose to 50 percent, and with the decontrol of additional natural gas production and the depletion of natural gas reserves that remained subject to controls, this percentage rose to 61 percent by the end of 1988.

The NGPA decontrol process covered only "new gas"—generally defined as gas from wells drilled subsequent to 1976 (this being a generalization of the very complicated provisions in Title I of the NGPA which reference different trigger dates—most all in 1977—for different categories of natural gas production). The NGPA provides that prices and nonprice controls upon wellhead sales of certain other categories of natural gas production remain in place forever. In particular, two basic types of natural gas production remain regulated at the wellhead: "old gas," which is gas that was dedicated to interstate commerce under the Natural Gas Act [NGA] before the NGPA was passed; and "incentive gas," which the Congress determined required price regualtion.

The NGPA ceiling prices for gas that remains subject to wellhead controls have risen steadily since 1978. The NGPA provides that the ceiling prices for the various categories (or vintages) of "old gas" automatically rise at the rate of inflation, while the ceiling prices for "incentive gas" automatically rise at the rate of inflation plus an additional increment as an incentive for production. The statutory ceiling prices for the various categories of natural gas production that remain subject to NGPA controls are widely disparate, ranging from $0.35 per mcf for "minimum rate" gas under section 104, to $6.83 per MMBTU for gas produced from "tight formations" under section 107. (One million British thermal units (MMBTU) is roughly equivalent to one thousand cubic feet of natural gas (mcf).) The average wellhead price for domestic natural gas production in 1988 was $1.71 per mcf.

2. WELLHEAD CONTROLS NO LONGER SERVE THE PUBLIC INTEREST

While partial wellhead decontrol under the NGPA has helped to create an environment in which competition, not public utility-type regulation, is the dominant force in determining prices and supplies in the natural gas sales market, those wellhead controls that remain in effect continue to distort the market and prevent optimal levels of natural gas production at reasonable prices. Furthermore, due to the continuing depletion of "old gas" reserves and the escalation of NGPA celing prices to levels far in excess of the market clearing price, the remaining wellhead controls do little, if anything, to protect natural gas consumers.

According to the Energy Information Administration of the Department of Energy (EIA), decontrolled gas represented 61 percent of domestic natural gas production in 1988. EIA classified an additional 33 percent of domestic production as "effectively decontrolled" in 1988, because the statutory ceiling prices for such gas exceeded the average wellhead sales price for such gas. Thus, according to EIA, NGPA ceiling prices encumbered only 6 percent of domestic production in 1988.

In volumetric terms, the percentage of domestic natural gas production represented by gas subject to NGPA wellhead controls becomes increasingly smaller with each passing year. For example, with respect to all categories of gas subject to wellhead controls, this percentage fell from slightly over 50 percent in 1985 to just under 39 percent in 1988. During this same period, the percentage of domestic production represented by old gas dedicated to interstate commerce fell from approximately 20 percent in 1985 to approximately 17 percent in 1988. This trend is projected to continue in the future.

These unmistakable trends lead to the following conclusions: First, price controlled gas represents a steadily diminishing minority of our nation's natural gas production; second, as a result, average natural gas prices to consumers are now set by market forces; and third, as a consequence, NGPA wellhead controls no longer provide any real protection for residential consumers.

More serious than the greatly diminished consumer protection role served by NGPA ceiling prices is the fact that remaining wellhead controls disserve the public interest by distorting the accurate transmission of market signals from burnertip to wellhead. The multiplicity of NGPA pricing categories and the wide disparity between the highest and lowest prices confuse producers' decisions as to where to commit limited capital for exploration, drilling and production. These artificial constraints upon wellhead prices have resulted in overinvestment in low-producing but high-priced wells and underinvestment in production from previously-discovered reservoirs from which more gas could have been produced at relatively lower prices.

Artificial constraints on the price of "old gas" have also made it impossible for the market to equate supply and demand in the most efficient manner. Below-market pricing for "old gas" encouraged pipelines to purchase gas at above-market prices, because they just "roll-in" the cost of high-priced gas with their "cushion" of low-cost price-controlled old gas. Furthermore, although NGPA ceiling prices do not compel purchasers to pay the maximum lawful price for price controlled gas, producer-pipeline gas purchase contracts referencing the maximum lawful price had the net effect of artificially propping up prices at levels far in excess of the market clearing price. EIA data confirms that categories of natural gas production still subject to price controls have retained the highest average wellhead prices.

In conclusion, the remaining wellhead price controls constitute a scheme of subsidies and penalties for various categories of natural gas production that is uneconomic, wasteful, and ultimately harmful to consumers. It is now clear that the energy price forecasts of the late 1970s that formed the basis for the NGPA's "incentive price" provisions were erroneous. Whatever validity the NGPA price categories may have had eleven years ago, today this system of wellhead regulation frustrates rational decisions to produce on the basis of real economic cost.

Based upon experience, it is now evident that federally administered wellhead prices contributed to price volatility and supply constraints in natural gas markets. Administered prices did not prevent the curtailments of the 1970s and did not prevent excess supply and accrual of take-or-pay liability in the 1980s. These market swings were costly for consumers and producers alike. While market fluctuations caused by the temporary dislocation of supply and demand cannot by prevented, the severity of such fluctuations can be minimized by ending wellhead regulation.

3. RECONSTITUTION OF THE NATURAL GAS INDUSTRY AND THE FRAMEWORK FOR FEDERAL NATURAL GAS REGULATION

Changes in the natural gas industry and in the framework for Federal natural gas regulation that have occurred over the past decade (and particularly those changes that have occurred since the decontrol of new gas supplies on January 1, 1985) make the repeal of remaining wellhead controls appropriate.

Price controlled "old gas" is no longer a meaningful economic factor in setting the average price of natural gas paid by consumers. The market has displaced administered price controls as the predominant force in setting natural gas prices. It is sending fairly accurate signals to consumers on when to consume gas, as opposed to alternate fuels, and to producers on when to produce additional gas. The past several years have demonstrated that the natural gas market is very responsive to supply and demand conditions (with wellhead prices falling in the summer and rising in the winter). Generally, natural gas prices are capped by the price of oil, which has been decontrolled since 1981. Also, in certain periods, intense gas-on-gas competition has pushed gas prices below the oil-equivalent price.

The significant drop in wellhead natural gas prices since the decontrol of new gas January 1, 1985, also makes complete wellhead decontrol appropriate at this time. As a result of partial wellhead decontrol under the NGPA which freed up the majority of domestic natural gas production to respond to market forces and developments in oil markets which have impacted natural gas markets, average wellhead natural gas prices have declined from $2.66 per mcf in 1984 to approximately $1.70 per mcf in 1988. The decline in wellhead natural gas prices has been passed through in substantial part to residential consumers. Average residential rates dropped by $0.85 per mcf between the winter of 1984–85 and the winter of 1987–88. This decline parallels the decline in natural gas prices for other end-use sectors. During the same time period, commercial consumer gas costs declined $0.90 per mcf, industrial consumer gas costs declined by $1.12 per mcf, and electric utility gas costs declined by $0.06 per mcf.

Actions by the Federal Energy Regulatory Commission, Federal court decisions, and market pressures have stimulated competition in the natural gas pipeline industry that has created opportunities for all classes of natural gas consumers to share in the benefits of the decline in wellhead prices. Principal among these changes has been FERC's encouragement of open accesss transportation of natural gas by interstate pipelines and the oppportunity for local distribution companies [LDCs] to convert pipeline sales service to pipeline transportation service (promulgated in FERC Order Nos. 436 and 500) and the elimination of minimum bills that required LDCs to pay for gas not taken (promulgated in FERC Order No. 380).

Other significant FERC initiatives include rules that liberalize the abandonment of first sales upon the expiration of the underlying gas purchase contract (promulgated in FERC Order No. 490) and rules permitting producers of "old gas" to obtain the market price for their production (subject to a "just and reasonable" cap set at the highest vintage price for "old gas") after unilaterally triggering a good faith negotiation procedure with the purchasing pipeline (promulgated in FERC Order No. 451). Judicial review of both of these rules is pending at present.

Traditionally, pipelines purchased gas from producers and transported that gas to consuming markets where it was resold to LDCs and end users. This traditional structure changed significantly during the 1980s as LDCs and industrial end users increasingly have utilized pipelines only to transport the gas that they purchase directly from producers and marketers. Under the FERC's open access transportation program, pipelines that accept blanket certificates of public convenience and necessity under section 7 of the NGA or that render transportation service under authority of section 311 of the NGPA must transport gas for third parties on a nondiscriminatory basis.

As of May 1988, 21 of the 23 major interstate natural gas pipelines were open access transporters (with the other two pipelines in the process of becoming open access transporters). As a result, approximately 90 percent of the Nation's natural gas throughput is now carried over open access pipelines. In 1988, transportation gas represented 63 percent of the natural gas delivered to market by interstate pipelines, a dramatic increase over 1984, the last full year prior to the issuance of FERC Order No. 436, when only 8 percent of market deliveries were transportation gas.

The emergence of a large dual-fuel market able to burn either oil or natural gas has stimulated oil-on-gas and gas-on-gas price competition that has contributed to the downward pressure on natural gas prices since 1985. The oil price collapse of 1986 intensified this interfuel and intrafuel competition to serve the dual-fuel market. Electric utilities and industrial end users make up the bulk of the dual-fuel market. Together, these two end-use sectors accounted for over 50 percent of the Nation's natural gas consumption in 1987. By virtue of their ability to price shop, end users with dual-fuel capability have kept wellhead prices in line with prices for residual fuel oil. This discipline on the natural gas sales market has benefitted not only dual-fuel consumers but also captive residential and commercial consumers who do not have the ability to fuel switch.

The Congress also has contributed to the removal of artificial market constraints by its repeal of certain statutory requirements that the NGPA imposed upon the allocation of natural gas supplies at the wellhead and upon demand for natural gas by industrial end users. In 1987, the Congress repealed the incremental pricing provisions of the NGPA that required interstate pipelines to charge artificially high prices to industrial customers that used gas in large boilers. At the same time that it repealed the incremental pricing provisions, the Congress substantially amended the Powerplant and Industrial Fuel Use Act of 1978 by virtually eliminating that statute's restrictions upon the use of natural gas in electric powerplants and other major fuel burning installations. A year later, the Congress amended the NGPA to remove contract duration and right of first refusal requirements that attached to certain categories of natural gas produced on the Outer Continental Shelf.

The United States Supreme Court's May 1988 decision in *FERC* v. *Martin Exploration Management Co.* maximized the impact of partial wellhead decontrol under the NGPA by resolving an ambiguity over the regulatory status of "dual category" gas. The Court held that the U.S. Court of Appeals for the 10th Circuit had erred when it reversed and remanded FERC Order No. 406 which interpreted the NGPA to mean that any gas that qualified for both regulated and deregulated treatment would be treated as deregulated. This holding results in greater volumes of deregulated gas than would have been the case otherwise.

4. WHAT THE BILLS DOES

The bill will complete the partial decontrol process begun over ten years ago under the 1978 NGPA. The NGPA decontrol process covered only "new gas" supplies—those from wells drilled after 1976—and finally ended two years ago with complete removal of federal controls on new gas.

The NGPA left in place federal price and nonprice controls on other categories of natural gas production, primarily cheap "old gas" and costly "incentive priced gas." Under the bill, these controlled types of gas would be gradually decontrolled over roughly the next three and one-half years. Five types of decontrol occur under the bill:

1. Already expired or terminated contracts: If a wellhead contract, technically termed a "first sale contract," has already expired or terminated before enactment, and is not in effect on the date of enactment, then the gas under the contract is decontrolled on the day after enactment.

2. New contracts made after enactment: Wellhead sales of gas subject to a contract entered into after the date of enactment are decontrolled.

3. Expiring and terminating contracts: Contracts which run out or otherwise end after enactment are decontrolled at that point. Decontrol does not depend on the particular manner in which the contract expires, terminates, ends, lapses, or otherwise becomes nonbinding. At such time as the seller is no longer contractually obligated to continue delivering the gas, that gas is decontrolled.

Many different factors can combine to produce this result, including the natural operation of the contract's own terms, termination by the parties, litigation, or other events (including the regulatory termination of the contract pursuant to a rule or order). The bill focuses on the result, not how it is reached.

4. Renegotiated contracts: Contracts which are voluntarily renegotiated after March 23, 1989, (the date that H.R. 1595 was introduced in the House of Representatives) and which expressly provide that sales under them shall be decontrolled, are decontrolled according to their terms.

5. Decontrol on January 1, 1993: Any gas still regulated at the end of 1992 is decontrolled at the start of 1993.

In the first four instances noted above, first sales are decontrolled only after the end of the contract to which the gas is subject. Thus, no gas subject to a "live" or valid contract is decontrolled in these four cases. Any argument that a valid contract is here being "abrogated"—by a "market out" or "mandatory renegotiation" law which overrides the terms of the contract—is thus untenable. Similarly, in the last instance (decontrol of remaining gas on January 1, 1993), the "first sale" is decontrolled (i.e., no longer subject to Federal regulation), but the pricing, volume, and all other provisions of the contract continue to apply according to their terms.

It should be noted here that the Senate wellhead decontrol bill differs from the House-passed bill in only one material respect; the Senate bill does not include a provision decontrolling gas delivered from a "newly spudded" well. That provision was excluded from the Senate bill because it was viewed as not in keeping with the policy direction embodied in the bill. In particular, the Committee believes that the transition period, which ends January 1, 1993, is important for equity purposes to permit parties to adapt their gas purchase arrangements to a fully decontrolled environment. In that regard, it would be unfair to single out gas delivered from a "newly spudded" well for treatment different from that given to other categories of natural gas production. During the transition period, the Senate bill does not decontrol gas under existing contracts, including gas delivered from a "newly spudded" well, unless contracts covering such gas expire or are renegotiated. This policy offers some protection to investors who committed capital to natural gas production under the expectation of continued price control. Thus under the Senate bill, gas delivered from a "newly spudded" well will be decontrolled with all other remaining price controlled gas no later than January 1, 1993.

The Committee stresses that no provision of this bill (either by its own force or through direction to any court or administrative agency) invalidates, abrogates or otherwise mandates the renegotiation of existing wellhead sales contracts. While maximum lawful prices under the NGPA imposed a ceiling on the prices that could be charged in first sale transactions, the statutory prices did not of their own force compel a purchaser to pay the maximum lawful price. Rather, it is by the operation of contract terms that reference the maximum lawful price as the contract price that parties are required to pay the maximum lawful price. This bill decontrols the first sale of natural gas, an event that has no bearing upon the continued vitality of a contract.

The fact that this bill might trigger certain contract clauses that provide for price redetermination in the event of wellhead decontrol is not abrogation of the contract. To the contrary, it is the operation of the contract in the manner intended and specifically envisioned by the parties at the time that the contract was entered. Even in the case of contracts that do not provide a price redetermination mechanism in the event of decontrol, state contract law and the Uniform Commercial Code provides legal means for the determination of a reasonable price. Finally, the bill provides more than three years between the date of enactment and the repeal of wellhead price controls for parties to reorder their contractual relationships in anticipation of making wellhead purchases (or sales) in a fully decontrolled environment. In consideration of the equities involved, the Committee believes that the transition period, which ends on January 1, 1993, is essential and represents sound public policy.

While this bill decontrols the first sale of natural gas, it does not deregulate interstate natural gas pipelines. The term "first sale", as defined by section 2(21) of the NGPA, expressly excludes "the sale of any volume of natural gas by any interstate pipeline." A pipeline's obligation to serve its customers arises out of the Natural Gas Act and is not affected by the decontrol of first sale transactions under the NGPA. Notwithstanding the decontrol of wellhead natural gas markets, pipelines remain obligated to provide service to their customers up to the certificated level of such service until appropriate abandonment authorization is received by the pipeline under section 7(b) of the NGA. The Committee intends that the FERC continue to fulfill its consumer protection mandate under the Natural Gas Act by regulating transportation and wholesale sales by such pipelines. In that regard, the Committee intends to continue its oversight of the FERC to ensure that captive residential consumers are not disadvantaged.

The Committee notes that section 29 of the Internal Revenue Code provides for a tax credit for the production of fuel from a nonconventional source and that this bill repeals sections of the NGPA that prescribe maximum lawful prices and procedures for qualifying under certain categories of natural gas that are referenced in section 29 for purposes of qualifying certain categories of natural gas production for the nonconventional fuels tax credit. The Committee does not intend for its approval of S. 783, including repeal of the NGPA sections referenced in section 29, to reflect an adverse judgment by the Committee as to the merits of tax credits for any categories of natural gas production that might be affected by such action.

Concern was expressed during hearings before the Committee that pending natural gas legislation might have an effect on the economic viability of the Great Plains Synthetic Fuels Project. Under the terms of its contract for the sale of the Great Plains Project, the Federal government will receive certain financial returns stemming from the gas purchase agreements with the original partners. The Committee would oppose any actions that would adversely affect those gas purchase agreements, the economic viability of the project, or anticipated returns to the Federal government. From this perspective, the Committee concurs in the judgment of the Department of Energy that none of the provisions of S. 625, S. 783 or H.R. 1722 would affect the Great Plains gas purchase agreements. As previously stated, the legislation does not abrogate or modify any contract.

Moreover, the Committee has received assurances from the Department that it would oppose actions which would modify the Great Plains gas purchase agreements in a manner which would adversely affect the Project's economic viability and the financial returns to the Federal Government. The continued operation of Great Plains was established as a major objective guiding the Federal government divestiture process and the Committee has received the Department's assurance that this policy objective is viewed by the Department as extending to post divestiture activities.

This position has been expressed by the Department in its letter of May 12, 1989, to the Federal Energy Regulatory Commission regarding proceedings involving a proposed restructuring of the merchant function of Transcontinental Gas Pipe Line Corporation, one of the four interstate natural gas pipelines that is contractually committed to purchase the Great Plains Project's output. The Department's letter requested that the Commission act to ensure that its action on the Transco restructuring plan not adversely affect the regulatory and contractual framework on which the Great Plains project is premised. The Committee supports the Department in this view.

The Committee also has been made aware of the existence of a number of oil and gas leases in Arkansas that provide for a royalty payment to the lessor of a percentage (usually one-eighth) of a fixed price (usually less than $0.10 per mcf) for natural gas. Some lessees have voluntarily paid royalties based on a higher price than that stated in the lease (up to approximately $0.05 per mcf). Nonetheless, the royalty owner/lessor has continued to receive substantially less than one-eighth of the value of the gas sold by the lessee. The Committee is greatly concerned about the inequities to the royalty owner from such "fixed price" leases and believes that royalty owners should share proportionately in the proceeds from an oil and gas well, as is the case in the vast majority of leases. The Committee notes that some lessees have voluntarily reformed "fixed price" leases to provide for a royalty based upon the proceeds from the lease and that state regulatory authorities have permitted natural gas companies to recover any additional gas purchase costs incurred as a result of such reformation. The Committee strongly encourages all lessees holding such "fixed price" leases to convert them to proceeds-type leases.

5. IMPACT OPN FUTURE NATURAL GAS PRODUCTION

This bill will have a salutary impact upon future natural gas production, because a decontrolled market with a single prevailing market price will encourage the efficient production of natural gas based upon the real economic cost of such production. This single market price should be much more efficient in equating supply and demand for natural gas than was the variety of widely disparate ceiling prices for categories of natural gas production under the NGPA. As a result of partial wellhead decontrol under the NGPA, a single price market for natural gas as a commodity has been largely achieved already. However, the "patchwork quilt" of contract terms and prices that are affected by those price controls that remain in place still prevents the market from achieving optimal results.

Once the "underbrush" of price and nonprice regulation (and the resulting impact of such regulation upon gas purchase contracts) is cleared away, natural gas producers will be inclined to maximize profits by producing gas that is the least expensive to drill and produce. Natural gas producers who can achieve a low real economic cost of production will flourish in a decontrolled environment, and those who relied upon administered price controls to prop up their contract prices will have to adjust to the marketplace or else perish.

Over time, competition among efficient producers will help to keep natural gas commodity prices at the lowest reasonable price necessary to summon forth sufficient gas supplies to meet consumer demand. Compared to what would occur without decontrol, this should be the result regardless of what the future brings. Absent the distoration produced by artificial controls on price and allocation, there will be low prices when there are abundant supplies or slackening demand and higher prices when there are tight supplies or increasing demand. By facilitating the unimpeded transmission of market signals, decontrol will help to avert supply shortages by permitting prices to achieve the level necessary to stimulate increased production.

In addition, decontrol will increase efficiency by relieving producers and pipelines from regulatory burdens that otherwise add to their cost and complicate their business decisions. For example, the removal of price and nonprice controls under this bill will free producers and pipelines from the need to contend with well category determinations, first sale abandonment, and the overlay of regulatory and judicial uncertainly that accompany the production of a regulated commodity.

LEGISLATIVE HISTORY

S. 783 was introduced on April 13, 1989, by Senator Johnston, on behalf of himself, Senator McClure, Senator Nickles, Senator Ford, Senator Bingaman, Senator Wallop, Senator Breaux, Senator Wirth, Senator Boren, Senator Simpson, Senator Garn, Senator Coats, and Senator Gramm. Subsequently, Senator Bentsen, Senator Gore, Senator Heflin, and Senator Cochran were added as cosponsors of S. 783.

A substantilly similar bill, S. 625, the Natural Gas Regulatory Reform Act of 1989, had been introduced by Senators Nickles and Ford on March 16, 1989.

On May 8, 1989, the Committee on Energy and Natural Resources held a hearing on S. 783, S. 625, and H.R. 1722 (the wellhead decontrol bill passed by the House of Representatives on April 17, 1989). At its business meeting on May 17, 1989, the Committee ordered S. 783 favorably reported. At that time, the Committee also reported H.R. 1722 as amended to conform to S. 783.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on May 17, 1989, by a majority vote of a quorum present recommends that the Senate pass S. 783 as described herein.

The rollcall vote on reporting the measure was 17 yeas, 2 nays, as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Bingaman*
Mr. Wirth
Mr. Conrad*
Mr. Heflin
Mr. Rockefeller

NAYS

Mr. Metzenbaum
Mr. Bradley

Mr. McClure
Mr. Hatfield*
Mr. Domenici
Mr. Wallop*
Mr. Murkowski*
Mr. Nickles
Mr. Burns*
Mr. Garn
Mr. McConnell*

* Indicates voted by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill is the short title, the "Natural Gas Wellhead Decontrol Act of 1989."

Section 2(a) of the bill adds a new subsection 121(f) to the NGPA.

The bill provides that, for purposes of new NGPA section 121(f), a first sale contract applies to natural gas when the seller has a "contractual obligation" to deliver such natural gas under such contract. The seller must have a contractual, as opposed to a regulatory, obligation to make deliveries of natural gas to the buyer. Thus, if the seller had a regulatory obligation under the NGA to deliver gas to the buyer, and the buyer had an implied contractual (or other) obligation to pay for the gas so delivered, neither obligation would constitute a "contractual obligation" of the "seller" to deliver.

For example, where the seller is obligated by a legally effective contract to deliver certain quantities of natural gas, under terms and conditions and at a price specified under such contract, the contract applies to such gas for purposes of new section 121(f). Consequently, in a case where the seller has been released temporarily from its delivery obligation to the original buyer, but there remains an underlying contractual obligation to deliver gas when the release period ends, neither the delivery of the released gas nor the delivery of the gas covered by the underlying contractual obligation is decontrolled.

However, following the enactment of this legislation, once the contract expires and the seller is no longer under a contractual obligation to continue deliveries, the contract is considered no longer applicable to the gas for purposes of new NGPA section 121(f), and deregulation occurs as of the date of contract expiration. Thereafter, neither seller nor buyer needs to obtain FERC abandonment authorization prior to terminating seller's delivery and buyer's receipt of the gas.

Section 2(b) of the bill completely repeals the entire Title I of the NGPA, respecting wellhead price controls, on January 1, 1993.

The definitions in section 2 of the NGPA are unaffected by this repealer.

All repeals of price controls under section 2 of the bill are prospective in legal effect. For example, "first sales" of gas delivered after a contract has expired, or has been renegotiated, are decontrolled, but first sales under such contract which occur before these events are not decontrolled.

Section 3 makes technical and conforming amendments to the NGPA.

Section 3 makes nonprice regulation under the Natural Gas Act (such as certificate, abandonment, and rate filing requirements) inapplicable to first sales of natural gas effective January 1, 1993, the same date that title I of the NGPA is repealed. Section 3 also removes certain categories of first sales from NGA jurisdiction earlier than January 1, 1993, concurrent with the cessation of NGPA jurisdiction over such first sales.

For example, in the case of gas to which a first sales contract applied on the date of enactment of the bill, but to which such contract ceases to apply after such date, NGPA price ceilings become inapplicable to first sales of such gas "delivered after such contract ceases to apply", and nonprice regulation under the NGA ceases to apply "effective as of the date" such gas ceases to be subject to the NGPA ceiling price. Accordingly, NGPA ceiling prices, which but for the bill would apply to gas "delivered" in a particular month, ceases to apply to gas delivered in a first sale after the date of contract expiration. In addition, nonprice regulation under the NGA would become inapplicable as of the date the gas ceases to be subject to NGPA ceiling prices—that is, as of the date of contract expiration. In sum, all three legal events—contract expiration, NGPA price decontrol, and the end of NGA regulation—occur simultaneously.

The Committee intends the usual "savings clause" interpretations, such as those in 1 U.S.C. 109, to be applied to this legislation. For example, NGPA enforcement, appellate, administrative, and other provisions will continue—after decontrol—to apply according to their terms to pre-decontrol first sales under a previously regulated contract and to other related conduct or activities. The goal is to prevent subsequent, post-decontrol agency and court actions and proceedings based on pre-decontrol sales or activities from being legally "cut off short" in midstream at the moment the wellhead sale is decontrolled, on the theory that Title I of the NGPA no longer exists.

To illustrate, suppose a new regulated infill well is drilled in 1988. The contract provides for above-market prices. The producer begins to utilize the well determination procedures of NGPA section 503 and the definitions in section 103, in order to qualify for the contractually-authorized high section 103 ceiling price. However, before this determination process is complete, the first sale contract expires by its own terms.

The Committee intends that any incomplete section 503 procedures continue to be carried out by the state agencies and the FERC, so that the necessary determination can be made as to sales of gas delivered before contract expiration and decontrol. However, in this hypothetical case, the section 503 procedures would not apply to first sales of gas delivered after contract expiration and decontrol.

Thus, the gradual expiration of controls after enactment and before January 1, 1993, and their complete expiration on and after that date, will not affect civil or criminal proceedings pending at the time of decontrol, nor any action or proceeding based on predecontrol acts or conduct.

Finally, the Committee intends that the Commission use its authority under the various statutes it administers, including the NGPA, the Natural Gas Act, and the Department of Energy Organization Act, to streamline and simplify as much as possible the transition to complete wellhead decontrol, and to appropriately reduce unnecessary filing, recordkeeping, and reporting requirements.

However, the Committee intends that the Energy Information Administration of the Department of Energy, and the FERC as well, continue to collect and publish all appropriate data, including wellhead pricing data and other natural gas-related statistics, which may reasonably be necessary to a full understanding of this important industry by the public, the industry, the Congress, and others.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 18, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 783, the Natural Gas Wellhead Decontrol Act of 1989, as ordered reported by the Senate Committee on Energy and Natural Resources on May 17, 1989.

This bill would amend the Natural Gas Policy Act of 1978 to eliminate price controls on natural gas wellhead contracts as the contracts expire, terminate, or are renegotiated. Any natural gas remaining under price controls on January 1, 1993 would then be decontrolled.

CBO estimates that enactment of S. 783 would have no net impact on the Federal budget or those of State or local governments. By the time all gas is decontrolled in 1993, CBO estimates the Federal Energy Regulatory Commission [FERC] could reduce its staff costs by about $3 million annually. Under current law, however, FERC is required to recover all of its costs through fees charged to the companies it regulates. Assuming these fees are effective in 1993, the cost savings attributable to S. 783 would be offset by a corresponding reduction in fees, resulting in no net budget impact.

I you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER.

REGULATORY IMPACT EVALUATION

S. 783 is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. Rather S. 783 repeals price and nonprice controls upon wellhead sales of natural gas that had been mandated by the NGA and the NGPA and will lessen the regulatory burden that must be shouldered by natural gas producers and purchasers of natural gas in first sale transactions.

S. 783 also will result in diminished regulatory activity by federal and state agencies and had been charged with regulatory responsibilities under the NGPA. In particular, approximately one half of the budget of the FERC's Producer Regulation Program is attributable to the administration of the wellhead pricing provisions of the NGPA. Additionally, three other federal agencies, the Minerals Management Service, the Bureau of Land Management, and the Bureau of Indian Affairs, currently serve as jurisdictional agencies responsible for making NGPA well category determinations for wells on federal lands. finally, 33 state regulatory agencies serve as jurisdictional agencies for making NGPA well determinations.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 783, as reported.

EXECUTIVE COMMUNICATIONS

The Committee requested formal views on S. 783, S. 625 and H.R. 1722 from the Department of Energy [DOE] and the Federal Energy Regulatory Commission. The reports received from the FERC are set forth below. Formal agency views on the wellhead decontrol bills have not been received from DOE. However, J. Allen Wampler, Assistant Secretary for Fossil Energy, testified on behalf of the Department at the May 8, 1989, hearing before the full Committee. The text of his testimony follows:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, May 23, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your May 5, 1989, letters requesting reports on S. 625, S. 783, and H.R. 1722, pending legislation to complete the decontrol of natural gas wellhead prices.

I firmly believe that the nation's energy needs are best served by permitting competitive forces to work through the marketplace to maintain the appropriate balance between price and supply. I support your efforts to remove unnecessary and outmoded restraints on natural gas so that the nation's energy future may be guided to the greatest extent possible by the market. Natural gas consumers will be the beneficiaries of a competitive market.

Enclosed are the reports prepared by the Commission's staff on the three pieces of legislation. We have provided 50 copies of each report for use by your Committee.

If I can be of further assistance on this or any other matter, please contact me.

Sincerely,

MARTHA O. HESSE.

Enclosured.

FEDERAL ENERGY REGULATORY COMMISSION REPORT ON S. 783

S. 783, the Natural Gas Wellhead Decontrol Act of 1989, provides for complete decontrol of wellhead price and nonprice controls on first sales of natural gas as of January 1, 1993, by repealing Title I of the Natural Gas Policy Act of 1978 (NGPA), which provides for wellhead pricing. It also provides for immediate decontrol in certain specified situations. These are:

1. Expired, terminated, or post-enactment contracts;
2. Expiring and terminating contracts; and
3. Renegotiated contracts after March 23, 1989

With respect to immediate decontrol, section 2(a) of S. 783 provides for decontrol of expired, terminated, and post-enactment contracts on the first day after enactment. For expiring or terminating contracts, decontrol is effective after enactment of S. 783 when the contract ceases to apply. Where parties to natural gas contracts have expressly agreed in writing after March 23, 1989, for decontrol, S. 783 provides that the parties' agreement is effective. However, the date specified must be after the date of S. 783's enactment. Section 2(b) of S. 783 repeals Title I of the Natural Gas Policy Act of 1978 (NGPA), which provides the wellhead pricing provisions, effective on January 1, 1993.

S. 783 does not specifically state that it coordinates with the Natural Gas Act (NGA). However, the technical and conforming changes contained in S. 783 appear to coordinate with the NGA. Those changes are discussed below.

Section 312 of the NGPA provides for assignment of rights to receive surplus gas. Section 312 (c) provides that for the purpose of assignment of contractual rights to receive surplus natural gas, the term "surplus natural gas" applies only to gas (1) which was not committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA; (2) the first sale of which is subject to a maximum lawful price established under title I of the NGPA; and (3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline, to exceed the pipeline's current demands. S. 783 deletes all limitations on gas which may be assigned. This provision is effective on January 1, 1993.

Section 313 limits the effect of prices paid for high-cost natural gas defined in section 107 of the NGPA in the application of price escalator clauses, as defined in section 105(b) of the NGPA. S. 783 provides that section 313 applies only to section 107 gas as defined as of January 1, 1989 and to price escalator clauses as defined on January 1, 1989. This provision is effective on January 1, 1993.

Under section 315(a) of the NGPA, the Commission may specify minimum duration of contracts for the purchase of natural gas to which sections 601(a)(1) (A) or (B) is applicable. S. 783 would repeal the Commission's authority to specify a minimum term for those contracts. This provision is effective upon enactment of S. 783.

Under section 501(c) of the NGPA, the Commission may delegate to a state agency any of its functions with respect to sections 105, 106(b), and 109(a) (1) and (3). S. 783 repeals section 501(c) effective January 1, 1993.

Section 502(d) provides procedures applicable to incremental pricing determinations of imports. The section requires incremental pricing determinations for imports of natural gas or liquified natural gas to be conducted in accordance with procedures applicable to the granting of authority under the NGA. Title II, which deals with incremental pricing, was repealed by Section 2 of P.L. 100-42, May 21, 1987. S. 783 repeals section 502(d) effective upon enactment.

Section 503 of the NGPA delegates authority to certain state or federal agencies to make well category determination classifications required by Title I of the NGPA. Section 503 provides procedures for obtaining a final well category determination, allows for interim collection, and defines the scope of review for final determinations. Since S. 783 repeals Title I effective on January 1, 1993, section 503 is repealed, thereby eliminating the requirement for well category determinations after that date. S. 783 repeals section 503 effective January 1, 1993.

Section 504(a) provides that it shall be unlawful for any person to violate any provision of the NGPA, including the sale of natural gas at a first sale price in excess of the applicable maximum lawful price (MLP). Since all MLP's will be repealed January 1, 1993, S. 783 deletes references to violation of MLPs in section 504(a) effective on January 1, 1993.

Section 504(b) of the NGPA adopts procedures for civil enforcement of the NGPA based on procedures adopted in the NGA. This section also provides for civil penalties for "knowing" violations of the NGPA. Effective upon enactment, S. 783 deletes enforcement provisions relating to incremental pricing contained in section 504(b)(3) and thereby removes remaining incremental pricing regulation.

Section 506(d) provides for judicial review of certain incremental pricing determinations. S. 783 repeals section 506(d) effective upon enactment to remove judicial review provisions on incremental pricing since Title II has been repealed.

Section 507 provides procedures for Congressional action required by sections 122, 202, or 206. S. 783 repeals the procedures effective upon enactment, thereby removing procedures for reimposing maximum lawful prices and incremental pricing.

Section 601 of the NGPA coordinates the NGPA with the NGA. Subsection (a) of section 601 outlines the jurisdiction of the Commission under the NGA. Section 601(a)(1)(E), which deals with Alaskan natural gas, states that new natural gas (section 102(c)) and new onshore gas (section 103(c)) produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976 remain subject to Commission jurisdiction. Upon enactment, S. 783 decontrols the categories of gas in section 601(a)(1)(E) on the same schedule slated for other interim categories of gas (*i.e.*, gas subject to already expired or terminated contracts, post-enactment contracts, expiring and terminating contracts, and contracts subject to renegotiation.) This section will be totally repealed on January 1, 1993.

Section 601(c)(2) guarantees that interstate pipelines may pass through or recover costs of natural gas purchased if the costs are "just and reasonable" and consistent with incremental pricing provisions. Upon enactment, S. 783 deletes reference to requirement that pipeline costs be consistent with incremental pricing provisions contained in the NGPA.

Section 601(a)(1)(A) provides that the NGA does not apply to gas which was not "committed or dedicated" on December 1, 1978, solely by reason of a first sale of such natural gas. S. 783 provides that effective January 1, 1993, the NGA will not apply to any first sale of gas.

Section 601(a)(1)(B) provides that first sales of certain categories of natural gas (*i.e.,* 107(c)(1)–(4), 102(c), and 103(c) are eliminated from NGA regulation. Section 601(a)(1)(B) applies both to gas that was dedicated to interstate commerce prior to enactment of the NGPA and to gas committed or dedicated to interstate commerce by definition under the NGPA. S. 783 repeals section 601(a)(1)(B) effective on January 1, 1993, when all price limitations will be decontrolled.

Section 601(b)(1)(A) provides that prices paid in any first sale of natural gas shall be deemed just and reasonable if the price does not exceed the maximum lawful price provisions of Title I of the NGPA. S. 783 revises section 601(b)(1)(A) to provide that *any* amount paid for a first sale is just and reasonable. This provision becomes effective on January 1, 1993.

Similarly, section 601(b)(1)(D) provides that prices paid under assigned contracts will be deemed just and reasonable if they do not exceed the MLP provisions in Title I of the NGPA. S. 783 provides that *any* amount paid in a first sale is just and reasonable. This provision also becomes effective on January 1, 1993.

Section 602(a) provides that States may prescribe *lower* maximum lawful prices than those set forth in Title I of the NGPA. S. 783 allows a State the authority to prescribe a maximum lawful price for gas produced in that State. This section is effective on January 1, 1993.

SUMMARY OF CONFORMING AND TECHNICAL CHANGES

The proposed conforming changes generally delete reference to incremental pricing and maximum lawful prices (MLPs) in Titles III and VI. A summary of the changes follows:

Present Provision	S.783
§ 312(c) - assignment of rights to receive surplus gas dedicated to	Deletes references to gas which is not committed or interstate commerce and gas which has MLP
§ 313 - prices paid for section 107 gas can't trigger indefinites in non-107 contracts	Inserts 1-1-89 where section is mentioned
§ 315(a) - permits FERC to specify 15-year term for 601(a)(1)(A) and (B) gas	Repealed effective upon enactment
§ 501(c) - delegates Commission functions to states with respect to 105, 106, and 109 gas	Repealed on 1/1/93
§ 502(d) - incremental price determinations	Repealed effective upon enactment
§ 503 - well determinations	Repealed on 1/1/93
§ 504(a) - unlawful acts	Deletes references to violations of MLP. Effective on 1/1/93

Present Provision	S.783
§ 504(b) - enforcement	Delete references to incremental pricing. Effective upon enactment
§ 506(d)- judicial review of incremental price determinations	Repealed effective upon enactment
§ 507 - Congressional review if controls reimposed	Repealed effective upon enactment
§ 601(a)(1)(E) Alaskan Natural Gas not NGA deregulated	Deregulates gas categories concurrently with decontrol of categories including Alaskan gas. Effective upon enactment
§ 601(c)(2) - requires PL recovery of cost to be J&R and consistent with incremental pricing requirement	Deletes reference to incremental pricing requirements. Effective upon enactment
§ 601(a)(1)(A) - NGA does apply to gas not committed or dedicated on 12/1/78 solely by reason of first sale	Effective January 1, 1993, NGA does not apply to any first sale
§ 601(a)(1)(B) - various categories of dedicated gas NGA deregulated, *i.e.*, 107(c)(1-4), 102(c), and 103(c)	Repealed on 1/1/93

Present Provision	S. 783
§ 601(a)(1)(E) - Alaskan Natural Gas not deregulated	Repealed on 1/1/93
§ 601(b)(1)(A) - prices paid deemed just and reasonable if they do not exceed MLPs	Any amount paid in first sale is just and reasonable. Effective on 1/1/93
§ 601(b)(1)(D) - prices paid under assigned contracts are just and reasonable if they do not exceed MLPs	Any amount paid in first sale is just and reasonable. Effective on 1/1/93
§ 602(a) - states have authority to prescribe lower MLPs	States have authority to prescribe MLPs for gas produced in that state

FEDERAL ENERGY REGULATORY COMMISSION REPORT ON H.R. 1722

H.R. 1722, the Natural Gas Wellhead Decontrol Act of 1989, provides for complete decontrol of wellhead price and nonprice controls on first sales of natural gas as of January 1, 1993, by repealing Title I of the Natural Gas Policy Act of 1978 (NGPA), which provides for wellhead pricing. It also provides for immediate decontrol in certain specified situations. These are:

1. Expired or terminated and post-enactment contracts;
2. Expiring and terminating contracts;
3. Renegotiated contracts after March 23, 1989; and
4. Newly spudded wells after March 23, 1989.

With respect to immediate decontrol, section 2(a) of H.R. 1722 provides for decontrol of expired, terminated, and post-enactment contracts on the first day after enactment. For expiring or terminating contracts, decontrol is effective after enactment of H.R. 1722 when the contract ceases to apply. Where parties to natural gas contract have expressly agreed in writing after March 23, 1989, for decontrol, H.R. 1722 provides that the parties' agreement is effective. However, the date specified must be after the date of H.R. 1722's enactment. H.R. 1722 also provides that after enactment, gas from any well spudded after March 23, 1989, is not subject to Title I.

H.R. 1722 does not specifically state that it coordinates with the Natural Gas Act (NGA). However, the technical and conforming changes contained in H.R. 1722 appear to coordinate with the NGA. Those changes are discussed below.

Section 312 of the NGPA provides for assignment of rights to receive surplus gas. Section 312(c) provides that for the purpose of assignment of contractural rights to receive surplus natural gas, the term "surplus natural gas" applies only to gas (1) which was not committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA; (2) the first sale of which is subject to a maximum lawful prices established under title I of the NGPA; and (3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline, to exceed the pipeline's current demands. H.R. 1722 deletes all limitations on what gas may be assigned. This provision is effective on January 1, 1993.

Section 313 limits the effect of prices paid for high-cost natural gas defined in section 107 of the NGPA in the application of price escalator clauses, as defined in section 105(b) of the NGPA, for gas which does not qualify under section 107. H.R. 1722 provides that section 313 applies only to section 107 gas as defined as of January 1, 1989 and to price escalator clauses as defined on January 1, 1989. This provision is effective on January 1, 1993.

Under section 315(a) of the NGPA, the Commission may specify minimum duration of contracts for the purchase of natural gas to which section 601(a)(1) (A) or (B) is applicable. H.R. 1722 would repeal the Commission's authority to specify a minimum term for those contracts. This provision is effective upon enactment of H.R. 1722.

Under section 501(c) of the NGPA, the Commission may delegate to a state agency any of its functions with respect to sections 105, 106(b), and 109(a) (1) and (3). H.R. 1722 repeals section 501(c) effective January 1, 1993.

Section 502(d) provides procedures applicable to incremental pricing determinations of imports. The section requires incremental pricing determinations for imports of natural gas or liquified natural gas to be conducted in accordance with procedures applicable to the granting of authority under the NGA. Title II, which deals with incremental pricing, was repealed by section 2 of P.L. 100-42, May 21, 1987. H.R. 1722 repeals section 502(d) effective upon enactment.

Section 503 of the NGPA delegates authority to certain state or federal agencies to make well category determinations required by Title I of the NGPA. Section 503 provides procedures for obtaining a final well category determination, allows for interim collection, and defines the scope of review for final determinations. Since H.R. 1722 repeals Title I effective on January 1, 1993, section 503 is repealed, thereby eliminating the requirement for well category determinations after that date. H.R. 1722 repeals section 503 effective January 1, 1993.

Section 504(a) provides that it shall be unlawful for any person to violate any provision of the NGPA, including the sale of natural gas at a first sale price in excess of the applicable maximum lawful price (MLP). Since all MLP's will be repealed January 1, 1993, H.R. 1722 deletes references to violation of MLPs in section 504(a) effective on January 1, 1993.

Section 504(b) of the NGPA adopts procedures for civil enforcement of the NGPA based on procedures adopted in the NGA. This section also provides for civil penalties for "knowing" violations of the NGPA. Effective upon enactment, H.R. 1722 deletes enforcement provisions relating to incremental pricing contained in section 504(b)(3).

Section 506(d) provides for judicial review of certain incremental pricing determinations. H.R. 1722 repeals section 506(d) effective upon enactment since Title II has been repealed.

Section 507 provides procedures for Congressional action required by section 122, 202, or 206. H.R. 1722 repeals the procedures effective upon enactment, thereby removing procedures for reimposing maximum lawful prices and incremental pricing.

Section 601 of the NGPA coordinates the NGPA with the NGA. Subsection (a) of section 601 outlines the jurisdiction of the Commission under the NGA. Section 601(a)(1)(E), which deals with Alaskan natural gas, states that new natural gas (section 102(c)) and new onshore gas (section 103(c)) produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976 remain subject to Commission jurisdiction. Upon enactment, H.R. 1722 decontrols the categories of gas in section 601(a)(1)(E) on the same schedule slated for other interim categories of gas (*i.e.*, gas subject to already expired or terminated contracts, post-enactment contracts, expiring and terminating contracts, and contracts subject to renegotiation). This section will be totally repealed on January 1, 1993.

Section 601(c)(2) guarantees that interstate pipelines may pass through or recover costs of natural gas purchase if the costs are "just and reasonable" and consistent with incremental pricing provisions. Upon enactment, H.R. 1722 deletes reference to requirement that pipeline costs be consistent with incremental pricing provisions contained in the NGPA.

Section 601(a)(1)(A) provides that the NGA does not apply to gas which was not "committed or dedicated" on December 1, 1978, solely be reason of a first sale of such natural gas. H.R. 1722 provides that effective January 1, 1993, the NGA will not apply to any first sale of gas.

Section 601(a)(1)(B) provides that first sales of certain categories of natural gas (*i.e.*, 107(c)(1)–(4), 102(c), and 103(c)) are eliminated from NGA regulation. Section 601(a)(1)(B) applies both to gas that was dedicated to interstate commerce prior to enactment of the NGPA and to gas committed or dedicated to interstate commerce by definition under the NGPA. H.R. 1722 repeals section 601(a)(1)(B) effective on January 1, 1993, when all price limitations will be decontrolled.

Section 601(b)(1)(A) provides that prices paid in any first sale of natural gas shall be deemed just and reasonable if the price does not exceed the maximum lawful price provisions of Title I of the NGPA. H.R. 1722 revises section 601(b)(1)(A) to provide that *any* amount paid for a first sale is just and reasonable. This provision becomes effective on January 1, 1993.

Similarly, section 601(b)(1)(D) provides that prices paid under assigned contracts will be deemed just and reasonable if they do not exceed the MLP provisions in Title I of the NGPA. H.R. 1722 provides that *any* amount paid in a first sale is just and reasonable. This provision also becomes effective on January 1, 1993.

Section 602(a) provides that States may prescribe *lower* maximum lawful prices than those set forth in Title I of the NGPA. H.R. 1722 allows States the authority to prescribe a maximum lawful price. This section is effective on January 1, 1993.

SUMMARY OF CONFORMING AND TECHNICAL CHANGES

The proposed conforming changes generally delete reference to incremental pricing and maximum lawful prices (MLPs) in Titles III and VI. A summary of the changes follows:

Present Provision	H.R. 1722
§ 312 - (c) - assignment of rights to receive surplus gas	Deletes references to gas which is not committed or dedicated to interstate commerce, gas which has MLP, and gas determined by state agency to be in excess of intrastate pipeline's demands.
§ 313 - prices paid for section 107 gas can't trigger indefinites in non-107 contracts	Inserts 1-1-89 where section is mentioned
§ 315(a) - permits FERC to specify 15-year term	Repealed effective upon enactment
§ 501(c) - delegates Commission functions to states with respect to 105, 106, and 109 gas	Repealed on 1/1/93
§ 502(d) - incremental price determinations	Repealed effective upon enactment
§ 503 - well determinations	Repealed on 1/1/93
§ 504(a) - unlawful acts	Deletes references to violations of MLP. Effective 1/1/93

Present Provision	H.R. 1722
§ 504(b) - enforcement	Delete references to incremental pricing. Effective upon enactment
§ 506(d)- judicial review of incremental price determinations	Repealed effective upon enactment
§ 507 - Congressional review if controls reimposed	Repealed effective upon enactment
§ 601(a)(1)(E) - Alaskan Natural Gas not NGA deregulated	Deregulates gas categories concurrently with decontrol of categories including Alaskan gas. Effective upon enactment
§ 601(c)(2) - requires PL recovery of cost to be J&R and consistent with incremental pricing requirements	Deletes reference to incremental pricing requirements. Effective upon enactment
§ 601(a)(1)(A) - NGA does apply to gas not committed or dedicated on 12/1/78 solely by reason of first sale	Effective January 1, 1993, NGA does not apply to any first sale
§ 601(a)(1)(B) - various categories of dedicated gas NGA deregulated, *i.e.*, 107(c)(1-4), 102(c), and 103(c)	Repealed on 1/1/93

Present Provision	H.R. 1722
§ 601(a)(1)(E) - Alaskan Natural Gas not deregulated	Repealed on 1/1/93
§ 601(b)(1)(A) - prices paid deemed just and reasonable if they do not exceed MLPs	Any amount paid in first sale is just and reasonable. Effective on 1/1/93
§ 601(b)(1)(D) - prices paid under assigned contracts just and reasonable if they do not exceed MLPs	Any amount paid in first sale is just and reasonable. Effective on 1/1/93
§ 602(a) - states have to authority to prescribe lower MLPs	States have authority prescribe MLPs for gas produced in that state

FEDERAL ENERGY REGULATORY COMMISSION REPORT ON S. 625

S. 625, the Natural Gas Regulatory Reform Act of 1989, provides for complete decontrol of wellhead price and nonprice controls on first sales of natural gas as of January 1, 1993, by repealing Title I of the Natural Gas Policy Act of 1978 (NGPA), which provides for the wellhead pricing. It also provides for immediate decontrol in certain specified situations. These are:

1. New contracts executed after enactment;
2. Renegotiated contracts after enactment;
3. Already expired or terminated contracts; and
4. Expiring and terminating contracts.

With respect to immediate decontrol, section 201 of S. 625 provides for decontrol of gas subject to any new contract executed after enactment. Similarly, where parties to natural gas contracts have expressly agreed in writing for decontrol, the gas is decontrolled in accordance with that agreement. For expired, terminated, and post-enactment contracts, S. 625 provides for decontrol on the first day after enactment. For expiring or terminating contracts, decontrol is effective after enactment of S. 625 when the contract ceases to apply. The specific language for these provisions will be contained in a new subsection of NGPA section 121, which eliminates price controls on certain natural gas sales. Deleted from section 121(a) is language that allows price controls to be reimposed.

The technical and conforming changes contained in S. 625 coordinate decontrol with the Natural Gas Act (NGA). Those changes are discussed below.

Section 312 of the NGPA provides for assignment of rights to receive surplus gas. Section 312(c) provides that for the purpose of assignment of contractual rights to receive surplus natural gas, the term "surplus natural gas" applies only to gas (1) which was not committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA; (2) the first sale of which is subject to a maximum lawful price established under title I of the NGPA; and (3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline, to exceed the pipeline's current demands. S. 625 deletes all limitations on gas which may be assigned. This provision is effective on January 1, 1993.

Under section 315(a) of the NGPA, the Commission may specify minimum duration of contracts for the purchase of natural gas to which section 601(a)(1) (A) or (B) is applicable. S. 625 would repeal the Commission's authority to specify a minimum term for contracts under section 601(a)(1)(B). This provision is effective on January 1, 1993.

Under section 501(c) of the NGPA, the Commission may delegate to a state agency any of its functions with respect to sections 105, 106(b), and 109(a) (1) and (3). S. 625 repeals section 501(c) effective January 1, 1993.

Section 502(d) provides procedures applicable to incremental pricing determinations of imports. The section requires incremental pricing determinations for imports of natural gas or liquified natural gas to be conducted in accordance with procedures applicable to the granting of authority under the NGA. Title II, which deals with incremental pricing, was repealed by Section 2 of P.L. 100-42, May 21, 1989. S. 625 repeals section 502(d) on January 1, 1993.

Section 503 of the NGPA delegates authority to certain state or federal agencies to make well category determination classifications required by Title I of the NGPA. Section 503 provides procedures for obtaining a final well category determination, allows for interim collection, and defines the scope of review for final determinations. Since S. 625 repeals Title I of the NGPA effective on January 1, 1993, section 503 is repealed, thereby eliminating the requirement for well category determinations after that date. S. 625 repeals section 503 effective January 1, 1993.

Section 504(a) provides that it shall be unlawful for any person to violate any provision of the NGPA, including the sale of natural gas at a first sale price in excess of the applicable maximum lawful price (MLP). Since all MLP's will be repealed January 1, 1993, S. 625 deletes references to violation of MLPs in section 504(a) effective on January 1, 1993.

Section 504(b) of the NGPA adopts procedures for civil enforcement of the NGPA based on procedures adopted in the NGA. This section also provides for civil penalties for "knowing" violations of the NGPA. Effective on January 1, 1993, S. 625 deletes enforcement provisions relating to incremental pricing contained in section 504(b)(3) and thereby removes remaining incremental pricing regulation.

Section 506(d) provides for judicial review of certain incremental pricing determinations. S. 625 repeals section 506(d) effective on January 1, 1993, to remove judicial review provisions on incremental pricing since Title II has been repealed.

Section 507 provides procedures for Congressional action required by sections 122, 202, or 206 of the NGPA. S. 625 repeals the procedures effective on January 1, 1993, thereby removing procedures for reimposing maximum lawful prices and incremental pricing.

Section 601 of the NGPA coordinates the NGPA with the NGA. Subsection (a) of section 601 outlines the jurisdiction of the Commission under the NGA. Section 601(a)(1)(E), which deals with Alaskan natural gas, states that new natural gas (section 102(c)) and new onshore gas (section 103(c)) produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976 remain subject to Commission jurisdiction. S. 625 repeals this section on January 1, 1993.

Section 601(a)(1)(B) provides that first sales of certain categories of natural gas (*i.e.*, 107(c) (1)-(4), 102(c), and 103(c)) are eliminated from NGA regulation. Section 601(a)(1)(B) applies both to gas that was dedicated to interstate commerce prior to enactment of the NGPA and to gas committed or dedicated to interstate commerce by definition under the NGPA. S. 625 modifies section 601(a)(1)(B) upon enactment to provide for the immediate decontrol noted above. Effective January 1, 1993, S. 625 repeals this section since all price limitations will be decontrolled.

Section 601(b)(1)(A) provides that prices paid in any first sale of natural gas shall be deemed just and reasonable if the price does not exceed the maximum lawful price provisions of Title I of the NGPA. S. 625 revises section 601(b)(1)(A) to provide that *any* amount paid for a first sale is just and reasonable. This provision becomes effective on January 1, 1993.

Similarly, section 601(b)(1)(D) provides that prices paid under assigned contracts will be deemed just and reasonable if they do not exceed the MLP provisions in Title I of the NGPA. S. 625 provides that *any* amount paid in a first sale is just and reasonable. This provision also becomes effective on January 1, 1993.

Section 602(a) provides that States may prescribe *lower* maximum lawful prices than those set forth in Title I of the NGPA. S. 625 deletes the language relating to maximum lawful price controls. This section is effective on January 1, 1993.

SUMMARY OF CONFORMING AND TECHNICAL CHANGES

The proposed conforming changes generally delete reference to incremental pricing and maximum lawful prices (MLPs) in Titles III and VI. A summary of the changes follows:

Present Provision	S.625
§ 312(c) - assignment of rights to receive surplus gas	Deletes references to gas which is not committed or dedicated to interstate commerce and gas which has MLP
§ 315(a) - permits FERC to specify 15-year dedicated term for 601(a)(1)(A) and (B) gas	Repeals reference to section 601(a)(1)(B) "committed or natural gas"
§ 501(c) - delegates Commission functions to states with respect to 105, 106, and 109 gas	Repealed on 1/1/93
§ 502(d) - incremental price determinations	Repealed on 1/1/93
§ 503 - well determinations	Repealed on 1/1/93
§ 504(a) - unlawful acts	Deletes references to violations of MLP. Effective on 1/1/93

Present Provision	S.625
§ 504(b) - enforcement	Deletes references to incremental pricing. Effective on 1/1/93
§ 506(d) - judicial review of incremental price determinations	Repealed on 1/1/93
§ 507 - Congressional review if controls reimposed	Repealed on 1/1/93
§ 601(a)(1)(B) - various categories of dedicated gas NGA deregulated, *i.e.,* 107(c)(1-4), 102(c), and 103(c)	Modified to provide for interim decontrol. Repealed on 1/1/93
§ 601(a)(1)(E) - Alaskan Natural Gas not deregulated	Repealed on 1/1/93
§ 601(b)(1)(A) - prices paid deemed just and reasonable if they do not exceed MLPs	Any amount paid in first sale is just and reasonable. Effective on 1/1/93
§ 601(b)(1)(D) - prices paid under assigned contracts just and reasonable if they do not exceed MLPs	Any amount paid in first sale is just and reasonable. Effective on 1/1/93
§ 602(a) - states have authority to prescribe lower MLPs	Deleted

STATEMENT OF J. ALLEN WAMPLER, ASSISTANT SECRETARY FOR FOSSIL ENERGY, U.S. DEPARTMENT OF ENERGY

Mr. Chairman and Members of the Committee, I am pleased to have the opportunity to discuss the Department's position on pending legislation to decontrol natural gas wellhead prices. We have a unique opportunity this year to forge a bipartisan consensus that will end a 35-year era of Federal regulation in the natural gas industry. Your leadership, Mr. Chairman, will be instrumental in convincing your colleagues that the changing structure of the gas market is fostering increased competition which can be accelerated, to the benefit of consumers by completing the decontrol of wellhead gas prices. Speaking for Secretary Watkins and the Department, I want to congratulate you, along with other members of your Committee on both sides of the aisle, for your initiative in undertaking to build a workable consensus in support of decontrol.

The product of this bipartisan effort, if successful, will be the restoration of market forces in an industry that can play an expanding role in meeting our Nation's energy and environmental goals without imposing financial burdens on energy consumers.

Since the U.S. Supreme Court upheld Federal regulation of the gas industry in the Phillips decision in 1954, this Nation has suffered the distortions, complexities, shortages and inefficiencies of Federal natural gas price controls. In partial response, the Congress enacted the Natural Gas Policy Act (NGPA) of 1978. The Act was intended to help balance natural gas supply and demand by encouraging discovery and production of new gas supplies. It provided for a complicated, phased decontrol of the wellhead price of certain types of newly discovered gas. To help contain consumer prices, the NGPA kept price controls on gas discovered before April 1977. Thus, while the NGPA created incentives to produce high-cost new gas, it prolonged disincentives for full production of low-cost old gas.

Gradually, as the NGPA permitted the phase out of price controls on some categories of gas, the Nation began to witness the healthy and beneficial restoration of competition to the natural gas industry brought about by market pricing.

But even under the NGPA's phase out, certain categories of gas will remain under Federal price controls indefinitely. The gas still controlled includes both "old gas" and some categories of new gas. Between 35 percent and 40 percent of current domestic gas production is estimated to remain under Federal regulation.

In the interest of relieving the natural gas industry and consumers from this continuing costly regulatory burden and furthering competition in the industry all remaining wellhead price controls should be removed. In his first budget message to Congress, President Bush expressed the belief that "* * * at long last the Federal Government should fully decontrol natural gas."

We are pleased to note the consensus-building that occurred in the House of Representatives and resulted in passage of a natural gas wellhead decontrol bill that is now before your Committee for consideration. That bill, H.R. 1722, as well as Senate bills S. 625 and S. 783, would essentially eliminate remaining natural gas wellhead price controls as contracts expire or are renegotiated, with all well head price controls to be eliminated by January 1, 1993. This position represents a consensus that is supported by producers, pipelines and local distribution companies alike. The Department of Energy has advocated that the sooner wellhead price controls are removed the better. In the interest of keeping the consensus intact, however, DOE can support the January 1, 1993, date for total elimination of natural gas wellhead price controls. The Department of Energy is aware that there are some differences among the House and Senate versions of the decontrol bills. We view these differences as minor differences and would be extremely disappointed if these differences were allowed to escalate and become major differences. We trust that these differences can be resolved expeditiously and hope to see a bill on the President's desk prior to the summer recess.

The elimination of remaining wellhead price controls will contribute to a healthy and competitive natural gas industry. Deregulation will foster timely and market-responsive price signals which, in turn, will encourage increased exploration and production activities. This will help ensure that reliable supplies of natural gas remain available to consumers. Finally, competition will objectively and efficiently ensure that consumers pay the lowest prices consistent with long-term supply reliability.

The natural gas resource base in the United States is vast. A recent Department of Energy study found that we have a 35-year supply of natural gas at current consumption rates with costs of less than $3 per thousand cubic feet. Even greater quantities exist at higher prices.

Natural gas can make significant contributions to our domestic energy security while helping to preserve our environmental heritage. But to achieve these benefits, efficient pricing, production and use of natural gas are essential and long overdue. The Department of Energy, therefore, supports the emerging, bipartisan consensus to deregulate all remaining natural gas wellhead prices.

That completes my statement, Mr. Chairman. I will be pleased to answer any questions you or the Committee Members may have.

ADDITIONAL VIEWS OF SENATOR WALLOP

Though I strongly support gas decontrol legislation, I believe S. 783 may have an unintended effect on existing law. I submit these additional views to prevent any confusion.

Section 29 of the Internal Revenue Code of 1986 provides a tax credit for certain fuels produced from non-conventional sources that are "qualified" as such under NGPA section 503. To be qualified, the gas must be produced from a "new production" well before January 1, 1991. For gas produced from tight formations, Section 29 imposes an additional qualification: the gas produced must be subject to price regulation by NGPA.

Unfortunately, and quite unintentionally, the decontrol legislation currently before the committee could impact the section 29 credit in two ways. First, the legislation removes all price controls, thus rendering tight formation gas ineligible for the section 29 credit; and second, the legislation repeals NGPA section 503, thereby removing the only mechanism used to determine whether fuels are "qualified" for the credit.

It is important that a favorable report of decontrol legislation not be construed as a statement of the committee's intent to limit the section 29 credit. In no way are the Committee's actions intended to impair the continued viability of the tax credit for production of fuels from non-conventional sources. Indeed, I and many other supporters of gas decontrol believe that tax incentives for production of non-coventional fuels should be maintained and extended.

That is why I, together with four distinguished members of the Committee on Energy and Natural Resources, have co-sponsored the "Domestic Energy Security Act of 1989," S. 449, which would extend the credit to fuels produced before January 1, 1988. Just as importantly, S. 449 would also remove the requirement that tight formation gas be price regulated in order to be eligible for the tax credit.

While I fully support decontrol, I do not want my support to be misconstrued.

MALCOLM WALLOP.

MINORITY VIEWS OF SENATOR METZENBAUM

The natural gas decontrol legislation before the Senate represents a monumental change in the regulatory balance for our number one domestic fuel source. Under such a radical reordering of a regulatory compact, one might expect that all parties will benefit. But, incredibly, noting could be further from the truth.

There is absolutely nothing in this legislation that benefits residential and small commercial consumers. Nothing. S. 783 takes so much from consumers and offers not a thing in return.

If passed, this legislation would prove disastrous for natural gas consuming states. There is no reason for their elected representatives in Congress to support it.

Producers have argued that this legislation will not raise heating bills for the millions upon millions of Americans who rely on natural gas. Producers have argued that decontrol will free gas sellers to lower their sales prices. These arguments are ludicrous. Gas sellers don't need permission from Congress to lower their prices—if that's what they want, they can do so today without this legislation.

The real truth is quite clear: the oil and gas industry wouldn't be working so hard to pass this bill unless its passage would bring them untold millions of dollars in additional profits. With some of their old gas reserves controlled at 35 cents—60 cents—80 cents per thousand cubic feet the producers stand to make a very handsome profit from decontrol.

S. 783 would rise the price of old, inexpensive gas up to market levels but would let stand contract terms that artificially inflate the price of gas supplies. Such an injustice is hardly surprising from the oil and gas industry. After all, many of these are the same companies that sent gasoline prices soaring after the *Exxon Valdez* hit Bligh Reef.

Ten big oil companies alone control 45% of the natural gas reserves in this country, according to U.S. Department of Energy data. (These data are for 1987; it is up from 1982 when the figure was under 40%.) According to the *Oil and Gas Journal,* the top 20 U.S. gas producers own 53% of U.S. proven reserves. The majors' concentration is actually higher because Amoco and Shell, the largest Canadian producers, are well positioned to produce for expanding U.S. markets.

This degree of concentration is bad enough but is climbing out of sight as major oil companies buy up independent producers and the reserves they hold. Amoco recently purchased Dome—one of Canada's largest producers—and now Amerada Hess has bought up Transco's oil and gas properties.

All the witnesses at the Energy Committee's hearing admitted that gas prices will be going up, in response to growing demand for gas and OPEC's increasing success in raising oil prices. The Department of Energy, in its *EIA Annual Energy Outlook 1989,* forecasts that U.S. gas demand will increase significantly (up 11% in the past two years), especially from electric utilities, cogenerators, and independent power producers. This new demand will put additional upward pressure on gas prices.

And who will be burdened as the laws of supply and demand bring higher and higher prices? Residential consumers. While we don't know how far decontrol will allow prices to climb, the recent jumps in oil and gasoline prices should serve as a harbinger for natural gas.

It is no surprise that this legislation demands so much from consumers while offering them nothing in return. Small customers, such as residential and small commercial firms, cannot take advantage of competitive forces; they must continue to heat their homes and offices with natural gas sold by their local distribution company. For them "economic efficiency" is no more than a theoretical ideal—well described in a business school class, but impossible to take advantage of in the real world.

For these customers, who are captives of the gas industry and the whims of the marketplace, the current regulatory scheme is broken. This could be a golden opportunity to fix it. But S. 783 fails miserably.

When Congress passed the NGPA in 1978 it did so over the vocal opposition of consumers. But at least the NGPA, for all its many faults, assured consumers that as gas prices rose due to partial decontrol they could still buy that large, long-term body of "forever regulated" gas at reasonable and affordable prices (prices, by the way, that were high enough to reflect accurately producers' exploration and development costs, plus healthy profits).

S. 783 strips away this modest amount of protection for consumers and does so in a most unfair and uneven manner. It allows producers to keep charging very high incentive prices and lets them keep their onerous and oppressive contract clauses. These contract terms—which include take-or-pay, indefinite price escalators, failsafe, and favored nation contract clauses—may seem mysterious the layman, but they all serve one master: they lock in high prices and prevent the marketplace from forcing down expensively priced supplies.

And this time, unlike with the NGPA, pipelines will no longer have a cushion of cheap, old, long-term system supply to mix in to keep prices reasonable. Producers will reap windfall profits on old gas that costs them well under $1 per thousand cubic feet to produce, but now could keep on rising and rising to meet demand.

Producers and the Administration argue that almost all gas is effectively deregulated because all but a small fraction of regulated gas flowing today is selling at prices below the controlled ceilings. The folly of their argument will become clear as market prices inexorably rise, and prices for those formerly regulated categories of gas shoot through the price ceilings which would be stripped away by this bill. The last vestige of consumer protection granted as the quid for the quo of new gas deregulation will no longer be there to cushion the blow of higher and higher prices. Furthermore, that argument fails to address the trillions of cubic feet of gas that are not being sold but are being held in reserve until prices rise.

Oil companies, producers, the Administration, and others are chanting the mantra of "free markets," and views 1989 as a unique opportunity to remove wellhead controls. Yet the Federal Energy Regulatory Commission (FERC) has inexplicably failed to deregulate administratively incentive priced tight formation gas, as it said it intended to do several years ago in a proposed rule. This gas is currently selling at over three times the deregulated market price, yet FERC terminated the rulemaking without explanation!

S. 783 addresses wellhead decontrol but offers no help for the myriad of other marketplace failures in the natural gas industry. In summary, the bill comes up short in three major respects.

One, the bill offers no relief from massive take-or-pay bills in the billions of dollars that are today being heaped on residential consumers. Take-or-pay liabilities were the result of producer price gouging and imprudent purchases by pipelines in the late '70s and early '80s—but FERC has ordered the passthrough of these bills to consumers.

Two, S. 783 does nothing to challenge the other unreasonable and exorbitant contract terms that plague the gas industry. If decontrol's proponents truly wanted the free market to set gas prices then they would instantly banish the litany of anti-competitive contract clauses—such as the indefinite price escalators that are deliberately designed to send retail prices soaring upon decontrol.

Three, S. 783 fails to rein in FERC's program of administratively decontrolling gas and consequently loading costs onto residential and commercial customers. FERC is rubber stamping applications that allow large industrial customers to bypass local distribution companies, shifting costs to captive consumers. FERC is allowing unilaterral contract abrogation by producers of old gas in Order 451, and termination of producers' obligation to supply customers in Order 490. (Many experts argue that FERC's abrogation of minimum bill clauses in pipeline-customer contracts in 1984, without declaring unlawful similarly anticompetitive take-or-pay clauses in producer-pipeline contracts is a primary cause of the billions of dollars of liabilities being passed on to consumers today.)

To add insult to injury, FER last week took brazen steps to change fundamentally its rate design policy—a change that would inevitably result in much higher costs to residential consumers. This latest slap in the face to consumers by FERC would, among other upheavals, require strict mileage-based transportation rates. This will raise gas prices, especially to consumers in the Northeast and Midwest, who are most distant from the major producing areas. This policy would not only add significantly to residential prices, but could very well cause factories in the Midwest and Northeast to relocate closer to gas production areas to cut their energy bills. Many jobs in energy-consuming states would therefore be lost by this ill-conceived policy.

Let us not be fooled by supposed benefits of wellhead decontrol. The increasingly concentrated ownership of gas reserves will stifle competition, just as potential competition is limited in many producing and consuming areas of this country by the transportation monopoly of the pipelines. And what advantages true competition might offer will never be known by consumers at the end of the pipeline who are being punished by the oil and gas industry's greed and FERC's punitive policies.

The current regime of natural gas regulation can be improved. This legislation would improve the lot of the major producers by setting a new policy for natural gas prices: *the sky's the limit.* But it would allow terrible ills in the natural gas industry to fester just below the surface, to the continued detriment of residential consumers.

HOWARD M. METZENBAUM.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 783, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATURAL GAS POLICY ACT OF 1978

(92 Stat. 3350)

TABLE OF CONTENTS

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TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

* * * * * * *

Subtitle B—OTHER AUTHORITIES AND REQUIREMENTS

* * * * * * *

Sec. 315. [Contract duration; filing] *Filing* of contracts and agreements.

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TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

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[Sec. 507. Congressional review.]

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Subtitle B—Decontrol of Certain Natural Gas Prices

SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES.

(a) * * *

* * * * * * *

(f) ADDITIONAL DECONTROL.—The provisions of subtitle A respecting the maximum lawful price for a first sale of natural gas shall cease to apply to natural gas described in paragraphs (1), (2), (3), and (4), as follows:

(1) EXPIRED, TERMINATED, OR POST-ENACTMENT CONTRACTS.—In the case of natural gas to which no first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, subtitle A shall not apply to any first sale of such natural gas delivered on or after the first day after such date of enactment.

(2) EXPIRING OR TERMINATING CONTRACTS.—In the case of natural gas to which a first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, but to which such contract ceases to apply after such date of en-

actment, subtitle A shall not apply to any first sale of such natural gas delivered after such contract ceases to apply.

(3) Certain renegotiated contracts.—In the case of natural gas to which a first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, where the parties have expressly agreed in writing after March 23, 1989, that all or part of the gas sold under such contract shall not be subject to any maximum lawful price under subtitle A after a specified date, subtitle A shall not apply to any first sale of the natural gas subject to such express agreement delivered on or after the date so specified, except that subtitle A shall not cease to apply to any such natural gas pursuant to this paragraph before the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989.

For purposes of this subsection, a first sale contract applies to natural gas when the seller has a contractual obligation to deliver such natural gas under such contract.

Subtitle B—Other Authorities and Requirements

SEC. 311. * * *

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SEC. 315. [CONTRACT DURATION;] FILING OF CONTRACTS AND AGREEMENTS.

[(a) Contract Duration.—

[(1) General rule.—The Commission may, by rule or order, specify the minimum duration of any contract (other than any existing contract) for the purchase of natural gas to which section 601(a)(1) (A) or (B) is applicable. In no case may the minimum contract duration specified under this paragraph applicable to natural gas produced from any reservoir exceed 15 years or, if less, the commercially producible life of such reservoir. The provisions of this paragraph shall not apply to contracts of natural gas subject to the requirements of paragraph (3).

[(2) Nondiscriminatory application.—

[(A) In general.—Except as provided in subparagraph (B), the Commission may not exercise the authority provided under paragraph (1) in a manner which—

[(i) provides an advantage to interstate pipelines by diverting supplies of natural gas to interstate pipelines and thereby denying adequate supplies of natural gas to intrastate pipelines; or

[(ii) otherwise discriminates between purchases by interstate pipelines and intrastate pipelines of natural gas.

[(B) Special circumstnaces.—The Commission may vary any requirement established under paragraph (1) with respect to any cotnract by an interstate pipeline or intrastate pipeline to the extent necessary to respond to special circumstances.

[(b) Filing of Contracts and Ancillary Agreements.—] The Commission may, by rule or order, require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, together with all ancillary agreements and any existing contract applicable to such natural gas.

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TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

SEC. 501. * * *

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SEC. 502. ADMINISTRATIVE PROCEDURE.

(a) * * *

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[(d) PROCEDURES APPLICABLE FOR INCREMENTAL PRICING DETERMINATIONS RESPECTING IMPORTS.—Notwithstanding the preceding provisions of this section, any determination made under section 207(c) shall be made in accordance with the procedures applicable to the granting of any authority under the Natural Gas Act to import natural gas or liquefied natural gas (as the case may be).]

SEC. 504. ENFORCEMENT.

(a) * * *

* * * * * * *

(b) CIVIL ENFORCEMENT.—

(1) IN GENERAL.—Except as provided in [paragraphs (2) and (3)] *paragraph 2*, whenever it appears to the Commission that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this Act, or of any rule or order thereunder, the Commission may bring an action in the District Court of the United States for the District of Columbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this Act, or any rule or order thereunder.

* * * * * * *

[(3) ENFORCEMENT OF INCREMENTAL PRICING.—The Secretary, the Commission, or, on the request of the Secretary of Energy or the Commission, the Attorney General, may institute a civil action for injunctive or other equitable relief as may be appropriate to assure compliance with the provisions of section 205 requiring the passthrough of surcharges paid under section 204 by any local distribution company with respect to natural gas delivered to incrementally priced industrial facilities served by such company. Such action may be instituted in any district court of the United States in the State in which such local distribution company conducts business or in the District Court of the United States for the District of Columbia.]

(4) RELIEF AVAILABLE.—In any action under [paragraph (1), (2), or (3)] *paragraph (1) or (2),* the court shall, upon a proper showing, issue a temporary restraining order or preliminary or

permanent injunction without bond. In any such action, the court may also issue a mandatory injunction commanding any person to comply with any applicable provision of law, rule, or order, or ordering such other legal or equitable relief as the court determines appropriate, including refund or restitution.

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SEC. 506. JUDICIAL REVIEW.

(a) * * *

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[(d) Judicial Review of Certain Incremental Pricing Determinations.—Notwithstanding the preceding provisions of this section, any final determination made under section 207(c) shall be subject to judicial review in accordance with the provisions of the Natural Gas Act applicable to judicial review of any final determination respecting the grant or denial of any authority to import natural gas or liquefied natural gas.]

[SEC. 507. CONGRESSIONAL REVIEW.

[(a) Application.—This section applies with respect to—

[(1) any disapproval by concurrent resolution of a Presidential reimposition of maximum lawful prices under section 122;

[(2) any congressional reimposition by concurrent resolution of maximum lawful prices under section 122; and

[(3) any resolution of disapproval relating to incremental pricing under section 202(c) or 206(d)(2).

[(b) Determination of Calendar Days of Continuous Session.—In determining calendar days of continuous session for purposes of provisions of this Act providing for disapproval under this section—

[(1) continuity of session is broken only by an adjournment of Congress sine die; and

[(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-calendar-day period involved.

[If both Houses are not in session on the day any submittal subject to disapproval is received by the appropriate officers of each House, for purposes of this section such submittal shall be deemed to have been submitted on the first succeeding day on which both Houses are in session. If both Houses of the Congress do not receive a submittal on the same day, it shall not be considered to be received by either House until the day on which both Houses receive it.

[(c) Resolution.—For purposes of this section, and section 122, 202, and 206—

[(1) Concurrent resolution disapproving reimposition of price ceilings.—The term "concurrent resolution of disapproval", when used with respect to reimposition of maximum lawful prices under section 122(c)(1), means a resolution the matter after the resolving clause of which is as follows: "That the Congress does not approve of the reimposition of maximum lawful prices for first sales of natural gas under section 122(c)(1) of the Natural Gas Policy Act of 1978 pursuant to the transmittal by the President to the Congress on , 19 .", the blank spaces being filled with the appropriate date.

[(2) CONCURRENT RESOLUTION EFFECTING REIMPOSITION OF PRICE CEILINGS.—The term "concurrent resolution", when used with respect to reimposition of maximum lawful prices under section 122(c)(2), means a resolution the matter after the resolving clause of which is as follows: That the Congress favors reimposition of maximum lawful prices for first sales of natural gas as provided for under section 122(c)(2) of the Natural Gas Policy Act of 1978.".

[(3) RESOLUTION OF DISAPPROVAL OF INCREMENTAL PRICING ACTION.—The term "resolution of disapproval", when used with respect to incremental pricing rules, means a resolution the matter after the resolving clause of which is as follows: "That the does not approve the proposed rule under section of the Natural Gas Policy Act of 1978 (relating to incremental pricing of natural gas) a copy of which was transmitted to the Congress on .", the first blank being filled with the House in which such resolution is introduced, the second blank space being filled with the section under which proposed rule was issued, and the following blank spaces being filled with the appropriate date. For purposes of this paragraph, the term "rule" means any rule or any amendment thereto (other than a technical or clerical amendment).

[(d) EXPEDITED PROCEDURE.—

[(1) CONGRESSIONAL RULEMAKING POWER.—This subsection is enacted by Congress—

[(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

[(B) With full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

[(2) REFERRAL.—A resolution described by paragraph (2) once introduced with respect to any submittal shall immediately be referred to a committee (and all resolutions with respect to the same submittal shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

[(3) DISCHARGE.—

[(A) IN GENERAL.—If the committee to which a resolution with respect to a submittal has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such submittal which has been referred to the committee.

[(B) MOTIONS.—A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same submittal) and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

[(C) RENEWAL.—If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same submittal.

[(4) FLOOR CONSIDERATION.—

[(A) MOTION TO CONSIDER.—When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

[(B) DEBATE AND CONSIDERATION.—Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

[(6) DETERMINATION ON MOTIONS.—

[(A) MOTIONS TO POSTPONE OR TO PROCEED TO OTHER BUSINESS.—Motions to postpone, made with respect to the discharge from committee, or the consideration of a reolution and motions to proceed to the consideration of other business, shall be decided without debate.

[(B) APPEALS FROM THE DECISION OF THE CHAIR.—Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

[(7) SUBSEQUENT ACTION.—Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a submittal, then it shall not be in order to consider in that House any other resolution with respect to the same such submittal.]

* * * * * * *

TITLE VI—COORDINATION WITH NATURAL GAS ACT: MISCELLANEOUS PROVISIONS

SEC. 601. COORDINATION WITH THE NATURAL GAS ACT.

(a) JURISDICTION OF THE COMMISSION UNDER THE NATURAL GAS ACT.—

(1) SALES.—

(A) * * *

* * * * * * *

[(E) ALASKAN NATURAL GAS.—Subparagraph (B) (ii) and (iii) shall not apply with respect to natural gas produced from the Purdhoe Bay unit of Alaska and transported through the transporation system approved under the Alaska Natural Gas Transportation Act of 1976.]

(E) CERTAIN ADDITIONAL NATURAL GAS.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act and which is not subject to a maximum lawful price under subtitle A of title I by reason of section 121(f), effective as of the date such gas ceases to be subject to such maximum lawful price.

(c) GUARANTEED PASSTHROUGH.—

(1) * * *

* * * * * * *

(2) RECOVERY OF JUST AND REASONABLE PRICES PAID.—For purposes of sections 4 and 5 of the Natural Gas Act, the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any [purchase of natural gas if—

[(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, and

[(B) such recovery is not inconsistent with any requirement of any rule under section 201 (including any amendment under section 202),] *purchase of natural gas if, under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act,*

except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

[NOTE.—The following changes in existing law are effective January 1, 1993.]

TABLE OF CONTENTS

* * * * * * *

[TITLE I—WELLHEAD PRICING

[Subtitle A—Wellhead Price Controls

[Sec. 101. Inflation adjustment; other general price ceiling rules.
[Sec. 102. Ceiling price for new natural gas and certain natural gas produced from the Outer Continental Shelf.
[Sec. 103. Ceiling price for new, onshore production wells.
[Sec. 104. Ceiling price for sales of natural gas dedicated to interstate commerce.
[Sec. 105. Ceiling price for sales under existing intrastate contracts.
[Sec. 106. Ceiling price for sales under rollover contracts.
[Sec. 107. Ceiling price for high-cost natural gas.
[Sec. 108. Ceiling price for stripper well natural gas.
[Sec. 109. Ceiling price for other categories of natural gas.
[Sec. 110. Treatment of State severance taxes and certain production-related costs.

[Subtitle B—Decontrol of Certain Natural Gas Prices

[Sec. 121. Elimination of price controls for certain natural gas sales.
[Sec. 122. Standby price control authority.
[Sec. 123. Reports to the Congress.]

* * * * * * *

TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

* * * * * * *

[Sec. 503. Determinations for qualifying under certain categories of natural gas.]

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[TITLE I—WELLHEAD PRICING

[Subtitle A—Wellhead Price Controls

[SEC. 101. INFLATION ADJUSTMENT; OTHER GENERAL PRICE CEILING RULES.

[(a) ANNUAL INFLATION ADJUSTMENT FACTOR.—

[(1) GENERAL RULE.—For purposes of this title, the annual inflation adjustment factor applicable for any month shall be the sum of—

[(A) a factor equal to one hundredth of the quarterly percent change in the GNP implicit price deflator; plus

[(B) a correction factor of 1.002.

[(2) QUARTERLY PERCENT CHANGE IN THE GNP IMPLICIT PRICE DEFLATOR.—For purposes of paragraph (1)—

[(A) IN GENERAL.—The term "quarterly percent change in the GNP implicit price deflator", when used with respect to any month, means the quarterly percent change in the GNP implicit price deflator, computed and published as an annual rate by the Department of Commerce, for the most recent calendar quarter for which such quarterly percent change has been so published at least 8 days before the beginning of such month.

[(B) MONTHS BEFORE ENACTMENT.—For purposes of applying such term with respect to any month in any calendar quarter which ends before the date of the enactment of this Act and for which a quarterly percent change in the GNP implicit price deflator has been published by the Department of Commerce as of such date of enactment, the quarterly percent change in the GNP implicit price deflator for the calendar quarter in which such month occurs shall be used in lieu of the quarterly percent change in the GNP implicit price deflator for a preceding calendar quarter.

[(3) GNP implicit price deflator.—For purposes of paragraph (2)—

[(A) In general.—The term "GNP implicit price deflator" means, except as provided in subparagraph (B), the preliminary estimate of the implicit price deflator, seasonally adjusted, for the gross national product, as computed and published by the Department of Commerce for the calendar quarter involved.

[(B) Most recent data available on enactment.—The most recent revision, if any, of such implicit price deflator which has been so published before the date of the enactment of this Act, shall be used in lieu of the preliminary estimate of such implicit price deflator.

[(b) Rules of General Application.—

[(1) Depth.—Except where otherwise provided, the depth of the completion location of any well shall be the true vertical depth, measured from the surface location of the well.

[(2) Commercial quantities.—In determining whether production of natural gas has occurred in commercial quantities, quantities of natural gas produced from a well and used for the testing of such well or for other field uses which are production related shall not be taken into account.

[(3) Computation of monthly equivalent.—For purposes of computing any price under this title, the monthly equivalent of any factor shall be the twelfth root of such factor.

[(4) Application of ceiling prices.—The maximum lawful ceiling prices under this title—

[(A) shall only apply to natural gas produced in the United States;

[(B) shall apply to the month of delivery without regard to the date of the sale or the date of the contract under which the sale occurs; and

[(C) shall not apply to deliveries occurring before the first day of the first month beginning after the date of the enactment of this Act.

[(5) Sales qualifying under more than one provision.—If any natural gas qualifies under more than one provision of this title providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable.

[(6) Computation and publication of ceiling prices.—The Commission shall—

[(A) not later than 5 days before the beginning of any month, compute and make available the maximum lawful prices prescribed under this title for such month and the monthly equivalent of the annual inflation adjustment factor for such month, and

[(B) as soon as possible thereafter, publish such maximum lawful prices and such factor for such month in the Federal Register.

[(7) ROUNDING.—Any maximum lawful price under this title shall be computed to the nearest mill (rounding any fraction thereof which is one-half a mill or higher to the next highest mill).

[(8) COMPUTATION OF INITIAL CEILING PRICES.—In computing any maximum lawful price under the provisions of this title for the first month for which such provisions take effect, if the initial maximum lawful price is established by reference to any month before such month, such maximum lawful price shall be computed as if such provisions had been in effect during each such prior month.

[(9) EFFECT ON CONTRACT PRICE.—In the case of—

[(A) any price which is established under any contract for the first sale of natural gas and which does not exceed the applicable maximum lawful price under this title, or

[(B) any price which is established under any contract for the first sale of natural gas which is exempted under subtitle B of this title from the application of a maximum lawful price under this title,

such maximum lawful price, or such exemption from such a maximum lawful price, shall not supersede or nullify the effectiveness of the price established under such contract.

[SEC. 102. CEILING PRICE FOR NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF.

[(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of—

[(1) new natural gas; and

[(2) natural gas produced from any old lease on the Outer Continental Shelf and qualifying under subsection (d) for the new natural gas ceiling price.

[(b) MAXIMUM LAWFUL PRICE.—The maximum lawful price under this section for any month shall be—

[(1) $1.75 per million Btu's, in the case of April 1977; and

[(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the preceding month multiplied by the monthly equivalent of a factor equal to the sum of—

[(A) the annual inflation adjustment factor applicable for such month; plus

[(B)(i) .035, in the case of any month beginning before April 20, 1981; or

[(ii) .04, in the case of any month beginning after April 20, 1981.

[(c) DEFINITION OF NEW NATURAL GAS.—

[(1) GENERAL RULE.—For the purposes of this section, the term "new natural gas" means each of the following categories of natural gas:

[(A) NEW OCS LEASES.—Natural gas determined in accordance with section 503 to be produced from a new lease on the Outer Continental Shelf.

[(B) New onshore wells.—Natural gas determined in accordance with section 503 to be produced (other than from the Outer Continental Shelf) from—

[(i) any new well which is 2.5 miles or more (determined in accordance with paragraph (2)) from the nearest marker well; or

[(ii) any completion location, of any new well, which is located at a depth at least 1,000 feet below the deepest completion location of each marker well within 2.5 miles (determined in accordance with paragraph (2)) of such new well.

[(C) New onshore reservoirs.—

[(i) General rule.—Except as provided in clauses (ii) and (iii), natural gas determined in accordance with section 503 to be produced (other than from the Outer Continental Shelf) from a reservoir from which natural gas was not produced in commercial quantities before April 20, 1977.

[(ii) Behind-the-pipe exclusion.—Clause (i) shall not apply to natural gas produced from any reservoir if—

[(I) the reservoir was penetrated before April 20, 1977, by an old well from which natural gas or crude oil was produced in commercial quantities (whether or not such production was from such reservoir); and

[(II) natural gas could have been produced in commercial quantities from such reservoir through such old well before April 20, 1977.

[(iii) Withheld gas exclusion.—Clause (i) shall not apply to natural gas produced from any reservoir—

[(I) if such natural gas is produced through an old well; and

[(II) subject to clause (iv), suitable facilities for the production and delivery to a pipeline of such natural gas were in existence on April 20, 1977.

[(iv) Emergency sale facilities.—The criteria of clause (ii)(II) shall not be considered to be met by reason of the existence of production and delivery facilities which were installed to carry out sales and deliveries of natural gas—

[(I) under section 6 of the Emergency Natural Gas Act of 1977; or

[(II) under the emergency sale authority pursuant to Opinion 699-B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act.

[(2) Determinations of distance.—For purposes of determinating the distance from any new well to any marker well—

[(A) Surface location to surface location.—The measurement shall be the horizontal distance from the surface location of the new well to the surface location of the marker well—

[(i) in any case in which the new well meets requirements for the nondirectional drilling of wells prescribed by the appropriate State or Federal agency having regulatory jurisdiction over the drilling of such well; or

[(ii) in any case in which—

[(I) the surface drilling of such new well began on or after February 19, 1977;

[(II) production of natural gas in commercial quantities began from such well before the date of the enactment of this Act; and

[(III) the drilling of such well was not subject to any requirement regarding directional or nondirectional drilling, or the drilling of such well was subject to requirements regarding directional drilling but such requirements did not necessitate the obtaining of any permit or other certificate before drilling began.

[(B) COMPLETION LOCATION TO SURFACE LOCATION.—In the case of any new well which is not covered by subparagraph (A), the measurements shall be the horizontal distance from—

[(i) the closest point of any completion location of the new well, vertically projected to the same elevation as the new surface location of the nearest marker well; to

[(ii) the surface location of such marker well.

[(3) DETERMINATION OF COMMERCIAL QUANTITIES.—For purposes of determining whether production of natural gas has occurred in commercial quantities under paragraph (1)(C)—

[(A) a rebuttable presumption exists that production from a reservoir in commercial quantities has not occurred if natural gas has not been sold and delivered from such reservoir before April 20, 1977; and

[(B) quantities of natural gas sold in interstate commerce (within the meaning of the Natural Gas Act) shall not be taken into account if such quantities were sold before the date of the enactment of this Act—

[(i) under section 6 of the Emergency Natural Gas Act of 1977; or

[(ii) under the emergency sale authority pursuant to Opinion 699-B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act.

[(4) NEW WELLS WHICH ARE ALSO MARKER WELLS.—For purposes of applying paragraph (c)(1)(B)(ii) in the case of any marker well which is also a new well under section 2(3)(B), the reference in such paragraph (c)(1)(B) (ii) to the deepest completion location of any marker well shall be deemed to be a reference to any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970, and before February 19, 1977.

[(d) OCS GAS QUALIFYING FOR NEW NATURAL GAS CEILING PRICE.—For purposes of this section—

[(1) OCS RESERVOIRS DISCOVERED ON OR AFTER JULY 27, 1976.—Natural gas determined in accordance with section 503 to be produced from an old lease on the Outer Continental Shelf shall qualify for the new natural gas ceiling price if such natural gas is produced from a reservoir which was not discovered before July 27, 1976.

[(2) RESERVOIRS PENETRATED BEFORE JULY 27, 1976.—For purposes of paragraph (1), a reservoir shall be considered as having been discovered before July 27, 1976, if—

[(A) such reservoir was penetrated by a well before July 27, 1976; and

[(B) with respect to such well—

[(i) the results of any production test meeting the requirements of OCS Order No. 4 demonstrate that, as of the time of such test, the reservoir is capable of producing in paying quantities (within the meaning of such Order);

[(ii) any production capability evidence meeting the requirements of OCS Order No. 4 demonstrates that, as of the time such evidence is obtained, the reservoir is capable of producing in paying quantities (within the meaning of such Order); or

[(iii) subject to paragraph (3), an induction-electric log, sidewall cores and core analysis, or a wire line formation test indicates that, as of the time of such test, the paragraph is commercially producible.

[(3) EFFECT OF NEGATIVE PRODUCTION CAPABILITY TESTS.—For purposes of paragraph (c)(1)(B) (ii) (1), a reservoir shall not be considered as having been discovered before July 27, 1976, by the penetration of such paragraph by a well before July 27, 1976, if, with respect to such well—

[(A) a production test meeting the requirements of OCS Order No. 4 was performed and the results of such test fail to demonstrate that, as of the time of such test, such reservoir was capable of producing in paying quantities (within the meaning of such Order); and

[(B) production capability evidence meeting the requirements of OCS Order No. 4 does not exist or, if existing, does not demonstrate that, as of the date such evidence was obtained, such reservoir was capable of producing in paying quantities (within the meaning of such Order).

[(4) BURDEN OF PROOF.—For purposes of paragraph (1), the producer shall have the burden of showing that—

[(A) no test described in paragraph (2)(B) (i) or (iii) was performed and no evidence described in paragraph (2)(B) (ii) or (iii) exists; or

[(B) if any such test was performed or such evidence exists, the results of such test or such evidence do not provide the applicable demonstration or indication specified under paragraph (2).

[(5) DEFINITION OF OCS ORDER NO. 4.—For purposes of this subsection, the term "OCS Order No. 4" means the order numbered 4 of the Conservation Division, Geological Survey, Department of the Interior, as approved by the Chief of the Conservation Division on August 28, 1969.

[(e) Exclusion of Certain Alaska Natural Gas.—The preceding provisions of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

[SEC. 103. CEILING PRICE FOR NEW, ONSHORE PRODUCTION WELLS.

[(a) Application.—In the case of natural gas determined in accordance with section 503 to be produced from any new, onshore production well, the maximum lawful price computed under subsection (b) shall apply to any first sale of such natural gas delivered during any month.

[(b) Maximum Lawful Price.—

[(1) General rule.—The maximum lawful price under this section for any month shall be—

[(A) $1.75 per million Btu's, in the case of April 1977; and

[(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

[(2) Production after 1984 from wells 5,000 feet or less in depth.—Effective beginning with the month of January 1985 and in any month thereafter, in the case of any first sale of natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, and which is produced from a new, onshore production well from a completion location located at a depth of 5,000 feet or less, the maximum lawful price under this section for any such natural gas delivered during any month shall be a price which is midway between—

[(A) the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas); and

[(B) the maximum lawful price, per million Btu's, computed for such month under paragraph (1).

[(c) Definition of New, Onshore Production Well.—For purposes of this section, the term "new, onshore production well" means any new well (other than a well located on the Outer Continental Shelf)—

[(1) the surface drilling of which began on or after February 19, 1977;

[(2) which satisfies applicable Federal or State well-spacing requirements, if any; and

[(3) which is not within a proration unit—

[(A) which was in existence at the time the surface drilling of such well began;

[(B) which was applicable to the reservoir from which such natural gas is produced; and

[(C) which applied to a well (i) which produced natural gas in commercial quantities or (ii) the surface drilling of which was begun before February 19, 1977, and which was thereafter capable of producing natural gas in commercial quantities.

[(d) Exclusion of Certain Alaska Natural Gas.—The preceding provisions of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

[SEC. 104. CEILING PRICE FOR SALES OF NATURAL GAS DEDICATED TO INTERSTATE COMMERCE.

[(a) Application.—In the case of natural gas committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and for which a just and reasonable rate under the Natural Gas Act was in effect on such date for the first sale of such natural gas, the maximum lawful price computed under subsection (b) shall apply to any first sale of such natural gas delivered during any month.

[(b) Maximum Lawful Price.—

[(1) General rule.—The maximum lawful price under this section for any month shall be the higher of—

[(A)(i) the just and reasonable rate, per million Btu's, established by the Commission which was (or would have been) applicable to the first sale of such natural gas on April 20, 1977, in the case of April 1977; and

[(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month, or

[(B) any just and reasonable rate which was established by the Commission after April 27, 1977, and before the date of the enactment of this Act and which is applicable to such natural gas.

[(2) Ceiling prices may be increased if just and reasonable.—The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

[(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

[(B) just and reasonable within the meaning of the Natural Gas Act.

[SEC. 105. CEILING PRICE FOR SALES UNDER EXISTING INTRASTATE CONTRACTS.

[(a) Application.—The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of natural gas, sold under any existing contract or any successor to an existing contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act.

[(b) Maximum Lawful Price.—

[(1) General rule.—Subject to paragraphs (2) and (3), the maximum lawful price under this section shall be the lower of—

[(A) the price under the terms of the existing contract, to which such natural gas was subject on the date of the enactment of this Act, as such contract was in effect on such date; or

[(B) the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

[(2) Contract price exceeding new gas ceiling price on enactment.—In the case of any natural gas described in subsection (a) for which the contract price applicable on the date of the enactment of this Act exceeds the maximum lawful price, per million Btu's, computed for such date under section 102 (relating to new natural gas), the maximum lawful price under this section shall be the higher of—

[(A) the maximum lawful price, per million Btu's, computed for such month under section 102; or

[(B)(i) the contact price on the date of the enactment of this Act, in the case of the month in which this Act is enacted; and

[(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

[(3) Price increases resulting from indefinite price escalator clauses.—

[(A) In general.—Effective January 1985, and each month thereafter, in the case of any first sale of natural gas, which is sold at a price established under any indefinite price escalator clause of any existing contract or successor to an existing contract and for which the contract price on December 31, 1984, is higher than $1.00 per million Btu's, the maximum lawful price under this section for any such natural gas delivered during any month shall be the higher of—

[(i) the maximum lawful price, per million Btu's computed under paragraph (2)(B); or

[(ii)(I) in the case of January 1985, the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for such month; and

[(II) in the case of any month thereafter, the maximum lawful price, per million Btu's prescribed under this clause for the immediately preceding month multiplied by the monthly equivalent of the sum of a factor equal to the annual inflation adjustment factor applicable for such month plus .03.

[(B) Definition of indefinite price escalator clause.—For purposes of this paragraph, the term "indefinite price escalator clause" includes any provision of any contract—

[(i) which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

[(ii) which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

[(C) Contract modifications after May 3, 1978, to be disregarded.—In the case of any natural gas which was subject to any contract on May 3, 1978, that contained an indefinite price escalator clause on such date, no amendment to or modification of the operation of such contract made after such date may have the effect of limiting or precluding the application of this paragraph on or after January 1, 1985, to prices allowed with respect to such natural gas.

[(D) Exclusion.—Subparagraph (A) shall not apply to any first sale of new natural gas (as defined in section 102(c)), stripper well natural gas (as defined in section 108(b)), high-cost gas (as defined in section 107(c)), natural gas produced from a new, onshore production well (as defined in section 103(c)) from a completion location located at a depth of more than 5,000 feet, and, beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122, natural gas produced from any new, onshore production well (as defined in sectoin 103(c)) from a completion location located at a depth of 5,000 feet or less.

[(c) Definition of Contract Price.—For purposes of this section, the term "contract price", when used with respect to any specific date, means—

[(1) the price paid, per million Btu's, under a contract for deliveries of natural gas occurring on such date; or

[(2) if no deliveries of natural gas occurred under such contract on such date, the price, per million Btu's, that would have been paid had such deliveries occurred on such date.

[SEC. 106. CEILING PRICE FOR SALES UNDER ROLLOVER CONTRACTS.

[(a) Interstate Rollover Contracts.—In the case of any first sale under any rollover contract of natural gas which was committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—

[(1)(A) in the case of the month in which the effective date of such rollover contract occurs, the just and reasonable rate, if any, per million Btu's, established by the Commission and applicable on such date to the natural gas subject to the expired contract; and

[(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or

[(2)(A) $0.54 per million Btu's, in the case of April 1977; and

[(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month. For purposes of this subsection, the term "rollover contract" includes any contract which would have been a rollover contract but for the fact that the expiration of the previous contract occurred prior to the day before the date of the enactment of this Act.

[(b) INTRASTATE ROLLOVER CONTRACTS.—

[(1) GENERAL RULE.—In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—

[(A)(i) the maximum price paid under the expired contract, per million Btu's, in the case of the month in which the effective date of such rollover contract occurs; and

[(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or

[(B)(i) $1.00 per million Btu's, in the case of April 1977; and

[(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

[(2) CERTAIN STATE OR INDIAN PRODUCTION OR ROYALTY SHARES.—

[(A) GENERAL RULE.—In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which constitutes a State government's or Indian tribe's natural gas production, or royalty share or other interest (as of such day) in natural gas production, from real property (including subsurface mineral interests) owned on the date of the enactment of this Act by such State government or Indian tribe (as the case may be), the maximum lawful price under this subsection for any such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

[(B) Indian tribal lands.—For purposes of this paragraph, land shall be considered to be owned by an Indian tribe only if—

[(i) such land is owned directly by such tribe; or

[(ii) such land is held by the United States or any State in trust for Indian persons and is located within the boundaries of an Indian reservation (as such boundaries were in effect on the date of the enactment of this Act).

[(C) Definitions.—For purposes of this paragraph—

[(i) State government.—The term "State government" means any State or any agency, instrumentality, or political subdivision of a State.

[(ii) Indian tribe.— The term "Indian tribe" means any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians.

[(c) Ceiling Prices May Be Increased if Just and Reasonable.—The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

[(1) higher than the maximum lawful price would otherwise be applicable under such provisions; and

[(2) just and reasonable within the meaning of the Natural Gas Act.

[SEC. 107. CEILING PRICE FOR HIGH-COST NATURAL GAS.

[(a) Wells Completed Below 15,000 Feet.—In the case of any first sale of high-cost natural gas produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from any completion location which is located at a depth of more than 15,000 feet, the maximum lawful price under this section for such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

[(b) Commission Authority to Prescribe Higher Incentive Prices.—The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any high-cost natural gas, which exceeds the otherwise applicable maximum lawful price to the extent that such special price is necessary to provide reasonable incentives for the production of such high-cost natural gas.

[(c) Definition of High-Cost Natural Gas.—For purposes of this section, the term "high-cost natural gas" means natural gas determined in accordance with section 503 to be—

[(1) produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from a completion location which is located at a depth of more than 15,000 feet;

[(2) produced from geopressured brine;

[(3) occluded natural gas produced from coal seams;

[(4) produced from Devonian shale; and

[(5) produced under such other conditions as the Commission determines to present extraordinary risks or costs.

[(d) Provisions for High-Cost Natural Gas To Be Elective.—If any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax is specifically allowable with respect to any high-cost natural gas (or category thereof) under any provision of law enacted after the date of the enactment of this Act, the provisions of subsections (a) and (b) of this section and the provisions of subtitle B shall not apply to such natural gas produced from any well unless an election to have such provisions apply (in lieu of such credit, exemption, deduction, or adjustment) with respect to such natural gas produced from such well is filed with the Commission on or before the later of—

[(A) the 30th day after the date of the enactment of the Act under which such credit, exemption, deduction, or adjustment is provided; or

[(B) the date the surface drilling of such well began.

[SEC. 108. CEILING PRICE FOR STRIPPER WELL NATURAL GAS.

[(a) General Rule.—In the case of any first sale of stripper well natural gas the maximum lawful price under the section for such natural gas delivered during any month shall be—

[(1) $2.09 per million Btu's, in the case of May 1978; and

[(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the proceeding month multiplied by the monthly equivalent of a factor equal to the sum of—

[(A) the annual inflation adjustment factor applicable for such month; plus

[(B)(i) .035, in the case of any month beginning before April 20, 1981; or

[(ii) .04, in the case of any month beginning after April 20, 1981.

[(b) Definition of Stripper Well Natural Gas.—

[(1) General rule.—Except as provided in paragraph (2), the term "stripper well natural gas" means natural gas determined in accordance with section 503 to be nonassociated natural gas produced during any month from a well if—

[(A) during the proceeding 90-day production period, such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day during such period; and

[(B) during such period such well produced at its maximum efficient rate of flow, determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas.

[(2) Production in excess of 60 mcf.—The Commission shall, by rule, provide that, if nonassociated natural gas produced from a well which previously qualified as a stripper well under paragraph (1) exceeds an average of 60 Mcf per production day during any 90-day production period, such natural gas may continue to qualify as stripper well natural gas if the increase in nonassociated natural gas produced from such well was the result of the application of recognized enhanced recovery techniques.

[(3) Definitions.—For purposes of this subsection—

[(A) PRODUCTION DAY.—The term "production day" means—

[(i) any day during which natural gas is produced; and

[(ii) any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency having regulatory jurisdiction over the production of natural gas.

[(B) 90-DAY PRODUCTION PERIOD.—The term "90-day production period" means any period of 90 consecutive calendar days excluding any day during which natural gas is not produced for reasons other than voluntary action of any person with the right to control production of natural gas from such well.

[(C) NONASSOCIATED NATURAL GAS.—The term "nonassociated natural gas" means natural gas which is not produced in association with crude oil.

[SEC. 109. CEILING PRICE FOR OTHER CATEGORIES OF NATURAL GAS.

[(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of any natural gas delivered during any month, in the case of any natural gas which is not covered by any maximum lawful price under any other section of this subtitle, including—

[(1) natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under this title;

[(2) natural gas committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and for which a just and reasonable rate under the Natural Gas Act was not in effect on such date for the first sale of such natural gas;

[(3) natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which was not subject to an existing contract on such day; and

[(4) natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

[(b) MAXIMUM LAWFUL PRICE.—

[(1) The maximum lawful price under this section for any month shall be—

[(A) $1.45 per million Btu's, in the case of April 1977; and

[(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

[(2) CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

[(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

[(B) just and reasonable within the meaning of the Natural Gas Act.

[SEC. 110. TREATMENT OF STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.

[(a) Allowance for State Severance Taxes and Certain Production-Related Costs.—Except as provided in subsection (b), a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this subtitle if such first sale price exceeds the maximum lawful price to the extent necessary to recover—

[(1) State severance taxes attributable to the production of such natural gas and borne by the seller, but only to the extent the amount of such taxes does not exceed the limitation of subsection (b); and

[(2) any costs of compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or other similar costs, borne by the seller and allowed for, by rule or order, by the Commission.

[(b) Limitation on State Severance Taxes.—The State severance tax allowable under subsection (a)(1) with respect to the production of any natural gas may not include any amount of State severance taxes borne by the seller which results from a provision of State law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

[(c) Definition of State Severance Tax.—For purposes of this section, the term "State severance tax" means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas—

[(1) by any State or Indian tribe (as defined in section 106 (b)(2)(B)(ii)); and

[(2) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

[Subtitle B—Decontrol of Certain Natural Gas Prices

[SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES.

[(a) General Rule.—Subject to the reimposition of price controls as provided in section 122, the provisions of subtitle A respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall, except as provided in subsections (d) and (e), cease to apply effective January 1, 1985:

[(1) New natural gas.—New natural gas (as defined in section 102(c)).

[(2) NEW, ONSHORE PRODUCTION WELLS.—Natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

[(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

[(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

[(3) INTRASTATE CONTRACTS IN EXCESS OF $1.00.—Natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if—

[(A) such natural gas was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act; and

[(B) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price would have been paid had deliveries occurred on such date is higher than $1.00 per million Btu's.

[(b) HIGH-COST NATURAL GAS.—Effective beginning on the effective date of the incremental pricing rule required under section 201, the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas shall cease to apply to the first sale of high-cost natural gas which is described in section 107(c) (1), (2), (3), or (4).

[(c) NATURAL GAS PRODUCED FROM 5,000 OR LESS.—Effective beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122, the provisions of subtitle A respecting the maximum lawful price for any first sale of natural gas shall, except as provided in subsection (d), cease to apply to any first sale of natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

[(1) was not committed or dedicated to interstate commerce on April 20, 1977; and

[(2) is produced from a completion location which is located at a depth of 5,000 feet or less.

[(d) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The provisions of subsections (a) and (c) shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

[(e) LIMITATION ON INDEFINITE PRICE ESCALATORS.—Natural gas which is not subject to maximum lawful prices under subtitle A solely by reason of subsection (a)(3) and which is sold under any existing contract or successor to an existing contract at a price established under an indefinite price escalator clause (as defined in section 105(b)(3)(B)) shall be subject to the provisions of section 105(b)(3).

[(f) ADDITIONAL DECONTROL.—The provisions of subtitle A respecting the maximum lawful price for a first sale of natural gas shall cease to apply to natural gas described in paragraphs (1), (2), and (3), as follows:

[(1) EXPIRED, TERMINATED, OR POST-ENACTMENT CONTRACTS.—In the case of natural gas to which no first sale contract applies on the date of enactment of the Natural Gas Wellhead

Decontrol Act of 1989, subtitle A shall not apply to any first sale of such natural gas delivered on or after the first day after such date of enactment.

[(2) Expiring or terminating contracts.—In the case of natural gas to which a first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, but to which such contract ceases to apply after such date of enactment, subtitle A shall not apply to any first sale of such natural gas delivered after such contract ceases to apply.

[(3) Certain renegotiated contracts.—In the case of natural gas to which a first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, where the parties have expressly agreed in writing after March 23, 1989, that all or part of the gas sold under such contract shall not be subject to any maximum lawful price under subtitle A after a specified date, subtitle A shall not apply to any first sale of the natural gas subject to such express agreement delivered on or after the date so specified, except that subtitle A shall not cease to apply to any such natural gas pursuant to this paragraph before the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989.

[SEC. 122. STANDBY PRICE CONTROL AUTHORITY.

[(a) Reimposition of Price Controls.—The President, in accordance with subsection (c)(1), or the Congress, in accordance with subsection (c)(2), may reimpose maximum lawful prices for first sales of natural gas to which section 121(a) applies and delivery of which occurs after the effective date of the reimposition of such maximum lawful prices.

[(b) Limitations.—A reimposition of maximum lawful prices under this section—

[(1) may not take effect earlier than July 1, 1985, not later than June 30, 1987; and

[(2) shall remain in effect for a period of 18 months.

[(c) Procedure for Reimposing Price Controls.—For purposes of this section—

[(1) Presidential reimposition.—Any exercise of authority by the President under subsection (a) shall be by written order issued after May 31, 1985, and, subject to subsection (b), shall take effect for the first month beginning after the first 30 calendar days of continuous session of Congress (as determined in accordance with section 507(b)) after a copy of such order has been submitted to each House of the Congress unless during such 30 calendar days of continuous session of Congress, the Congress adopts a concurrent resolution of disapproval described in section 507(c)(1).

[(2) Congressional reimposition.—Any exercise of authority by the Congress under subsection (a) shall be by the adoption of a concurrent resolution after May 31, 1985, described in section 507(c)(2) and, subject to subsection (b), shall take effect for the first month beginning after the date of the adoption of such resolution.

[(d) Maximum Lawful Prices Applicable Under Reimposition of Price Control.—If maximum lawful prices are reimposed under this section on first sales of natural gas to which section 121(a) applies, the maximum lawful price under this section for any first sale of such natural gas delivered during any month shall be—

[(1) except as provided in paragraph (2), the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas); and

[(2) the maximum lawful price, per million Btu's computed for such month under section 103(b)(2) (relating to new, onshore production wells 5,000 feet or less in depth), in the case of natural gas produced from any new, onshore production well (as defined in section 103(c)) if such natural gas—

[(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

[(B) is produced from a completion location which is located at a depth of 5,000 feet or more.

[(e) ALLOWANCE FOR STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.—A price may exceed the maximum lawful price applicable for such natural gas under this section to the same extent as is provided under section 110 with respect to maximum lawful prices under subtitle A.

[(f) LIMITATION.—Maximum lawful prices may be reimposed only once under this section.

[SEC. 123. REPORT TO THE CONGRESS.

[(a) REPORTS.—On or before July 1, 1984, and on or before January 1, 1985, the Department of Energy shall prepare and transmit to the President and to each House of the Congress a report on natural gas prices, supplies, and demand, and the competitive conditions and market forces in the natural gas industry in the United States. Each such report shall include an evaluation by the Department of Energy whether equilibrium exists between supply and demand for natural gas.

[(b) PUBLIC COMMENT.—In preparing each report required under subsection (a), the Department of Energy shall provide an opportunity for public comment with respect to matters required under subsection (a) to be included in such report.]

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Subtitle A—Emergency Authority

SEC. 301. * * *

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Subtitle B—Other Authorities and Requirements

SEC. 311. * * *

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SEC. 312. ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS.

(a) Authorization of Assignments.—The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) Effect of Authorization Under Subsection (a).—For the effect of an authorization under subsection (a), see section 601 (relating to the coordination of this Act with the Natural Gas Act).

(c) Surplus Natural Gas.—For purposes of this section, the term "surplus natural gas" means **[**any natural gas—

[(1) which is not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act;

[(2) the first sale of which is subject to a maximum lawful price established under title I of this Act; and

[(3)**]** *any natural gas* which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

SEC. 313. EFFECT OF CERTAIN NATURAL GAS PRICES ON INDEFINITE PRICE ESCALATOR CLAUSES.

(a) High-Cost Natural Gas.—No price paid in any first sale of high-cost natural gas (as defined in section 107(c) *as such was in effect on January 1, 1989*) may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B *as such was in effect on January 1, 1989*) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 107(c) *as such was in effect on January 1, 1989*).

(b) Other Transactions.—No price paid—

(1) in any sale authorized under section 302(a), or

(2) pursuant to any order issued under section 303 (b), (c), (d), or (g),

may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B) *as such was in effect on January 1, 1989*).

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TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

SEC. 501. GENERAL RULEMAKING AUTHORITY.

(a) In General.—Except where expressly provided otherwise, the Commission shall administer this Act. The Commission, or any other Federal officer or agency in which any function under this Act is vested or delegated, is authorized to perform any and all acts (including any appropriate enforcement activity), and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this Act.

(b) Authority To Define Terms.—Except where otherwise expressly provided, the Commission is authorized to define, by rule, accounting, technical, and trade terms used in this Act. Any such definition shall be consistent with the definitions set forth in this Act.

[(c) Delegation of Certain Determinations.—The Commission may delegate to any State agency (with the consent of such agency) any of its functions with respect to sections 105, 106(b), and 109(a) (1) and (3).]

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SEC. 503. DETERMINATIONS FOR QUALIFYING UNDER CERTAIN CATEGORIES OF NATURAL GAS.

[(a) General Rule.—

[(1) Determination.—If any State or Federal agency makes any final determination which it is authorized to make under subsection (c) for purposes of—

[(A) applying the definition of new natural gas under section 102(c);

[(B) deciding if certain natural gas produced from the Outer Continental Shelf qualifies under section 102(d) for the new natural gas ceiling price;

[(C) applying the definition of new, onshore production well under section 103(c);

[(D) applying the definition of high-cost natural gas under section 107(c); or

[(E) applying the definition of stripper well nautral gas under section 108(b);

such determination shall be applicable under this Act for such purposes unless such determination is reversed under the provisions of subsection (b) or unless such State or Federal agency has waived its authority under the provision of subsection (c).

[(2) Notice to commission.—Any Federal or State agency making a determination under paragraph (1) shall provide timely notice in writing of such determination to the Commission. Such notice shall include such substantiation and be in such a manner as the Commission may, by rule, require.

[(b) Commission Review.—

[(1) Authority to review and reverse.—The Commission shall reverse any final State or Federal agency determination described in subsection (a) if—

[(A) it makes a finding that such determination is not supported by substantial evidence in the record upon which such determination was made; and

[(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) and the final such finding is made within 120 days after the date of the preliminary finding.

[(2) Remand on basis of commission information.—If—

[(A) the Commission finds that a State or Federal agency determination is not consistent with information contained in the public records of the Commission, and which is not part of the record upon which such determination was made; and

[(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) and the final such finding is made within 120 days after the date of the preliminary finding,

it may remand the matter to such State or Federal agency for consideration of such information. If such agency, after consideration of the information transmitted to it by the Commission, affirms its previous determination, such determination, as so affirmed, shall be subject to review in accordance with this subsection (other than this paragraph).

[(3) Notice.—The Commission shall provide notice of any proposed finding under this subsection to the State or Federal agency which made such determination and those parties identified in the notice to the Commission of such determination.

[(4) Judicial review of commission actions.—

[(A) Remands.—Any party identified in the notice to the Commission of a determination by a State or Federal agency may obtain review of any final decision by the Commission to remand under paragraph (2) in the United States Court of Appeals for any circuit in which such party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such decision if it finds such decision is arbitrary or capricious.

[(B) Findings.—Any person aggrieved or adversely affected by a final finding of the Commission under paragraph (1) may within 60 days thereafter file a petition for review of such finding in the United States Court of Appeals for any circuit in which the party involved in such determination is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such finding of the Commission if the State or Federal agency determination involved is supported by subtantial evidence.

[(c) State Authority.—

[(1) General rule.—A Federal or State agency having regulatory jurisdiction with respect to the production of natural gas is authorized to make determinations referred to in subsection (a).

[(2) Waiver.—

[(A) In general.—Any Federal or State agency may, in whole or in part, waive its authority to make determinations referred to in subsection (a)(1) by entering into an agreement in accordance with subparagraph (B). If such agency executes such a waiver, the Commission shall, consistent with the agreement, make the determinations which would otherwise be made by such Federal or State agency until the earlier of—

[(i) the expiration of the period specified in the agreement; or

[(ii) the date such agency transmits to the Commissionl written notice that it terminates such waiver and assumes the authority to make determinations refered to in subsection (a)(1).

Any waiver, or termination of any waiver, shall not apply to any determination with respect to any petition therefor which is pending before such agency or the Commission (as the case may be) on the date on which such a waiver or revocation is made.

[(B) AGREEMENTS.—Any waiver under subparagraph (A) may be made only by a written agreement between the Federal or State agency involved and the Commission. Any such agreement shall set forth the terms and conditions applicable to such waiver.

[(3) PROCEDURES APPLICABLE.—Determinations of a Federal or State agency referred to in subsection (a)(1) shall be made in accordance with the procedures generally applicable to such agency for the making of such determinations or comparable determinations under the provisions of Federal or State law, as the case may be, pursuant to which they exercise their regulatory jurisdiction. The Commission may prescribe the form and content of filings with a Federal or State agency in connection with determinations made under this section.

[(4) JUDICIAL REVIEW.—Any such determination referred to in subsection (a)(1) made in accordance with procedures described in paragraph (3) shall not be subject to judicial review under any Federal or State law except as provided under subsection (b).

[(d) EFFECT OF DETERMINATIONS.—For purposes of this Act—

[(1) GENERAL RULE.—Any final determination referred to in subsection (a)(1) made by a Federal or State agency (or by the Commission under subsection (c)(2)) which relates to any natural gas and which is no longer subject to review by the Commission under this section or to judicial review shall thereafter be binding with respect to such natural gas. The preceding sentence shall not apply to any final determination—

[(A) if in making such determination the Commission or such Federal or State agency relied on any untrue statement of a material fact; or

[(B) if there was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made, to the Federal or State agency in making such final determination or to the Commission in reviewing such determination.

[(2) APPLICATION OF TITLE 18.—Any untrue statement or omission of material fact to a Federal or State agency upon which the Commission relied shall be deemed to be statement or entry under section 1001 of title 18, United States Code.

[(e) INTERIM COLLECTION OF MAXIMUM LAWFUL PRICE.—

[(1) COLLECTION OF SECTION 109 PRICE.—

[(A) GENERAL RULE.—Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, a seller of natural gas which is produced from a new well may, in accordance with subparagraph (B), charge and collect the appropriate maximum lawful price under section 109 for any first sale of such natural gas.

[(B) REQUIREMENTS.—A seller may charge and make collections under subparagraph (A) only in accordance with the following requirements:

[(i) SWORN STATEMENT.—Before any such collection is made, the seller shall file with the Commission, and any Federal or State agency having authority to make determinations referred to in subsection (a)(1), a written sworn statement that such natural gas is produced from a new well and that such seller believes in good faith that such natural gas is eligible under this Act to be sold at a price not less than the appropriate maximum lawful price under section 109.

[(ii) PETITION FOR DETERMINATION.—Within 90 days after the date of the enactment of this Act, the seller files a petition to such Federal or State agency for a determination under this section.

[(iii) COLLECTION SUBJECT TO REFUND.—Any such collection made by the seller pending a determination under this section shall be collected subject to a condition of refund, with interest, in the event it is determined by such Federal or State agency that the applicable maximum lawful price is lower than that provided under section 109.

[(2) ALTERNATE INTERIM COLLECTION AUTHORITY.—

[(A) GENERAL RULE.—Promptly after the date of the enactment of this Act, the Commission shall, by rule or order, provide one or more methods under which a seller of natural gas may, in accordance with requirements established, and for such period as may be prescribed, under such rule or order, charge and collect for any first sale of such natural gas the maximum lawful price under title I for which a petition is filed for a determination under this section in any case in which such price exceeds the appropriate maximum lawful price under section 109.

[(B) COLLECTION SUBJECT TO REFUND.—Any such collection made by the seller pending a determination under section 503 shall be collected subject to a condition of refund, with interest. Such refund with interest shall be paid, in accordance with the rule under subparagraph (A), unless it is determined under this Act that the applicable maximum lawful price is equal to or greater than that collected. In addition, such seller shall comply with such requirements as the Commission shall prescribe in the applicable rule or order to provide adequate assurance that funds, to the extent attributable to a price in excess of the appropriate maximum lawful price under title I are available in the event of such refund.

[(3) COLLECTION AFTER INITIAL DETERMINATION.—

[(A) GENERAL RULE.—Effective beginning on the date of the notice of a determination under subsection (a)(2), a seller of natural gas covered by such determination may, in accordance with subparagraph (B), charge and collect the appropriate maximum lawful price applicable under such determination.

[(B) REQUIREMENTS.—A seller may charge and make collections under subparagraph (A) if such collection is subject to conditions prescribed by the Commission to assure refund, with interest, in the event it is determined under this Act that the applicable maximum lawful price is lower than that provided under section 109.]

SEC. 504. ENFORCEMENT.

(a) GENERAL RULE.—It shall be unlawful for any [person—

(1) to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this Act; or

(2) to otherwise] *person to* violate any provision of this Act or any rule or order under this Act.

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TITLE VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

SEC. 601. COORDINATION WITH THE NATURAL GAS ACT.

(a) JURISDICTION OF THE COMMISSION UNDER THE NATURAL GAS ACT.—

(1) SALES.—

[(A) NATURAL GAS NOT COMMITTED OR DEDICATED.—For purposes of section 1(b) of the Natural Gas Act, effective on the first day of the first month begining after the date of the enactment of this Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of the day before the date of enactment of this Act solely by reason of any first sale of such natural gas.]

(A) *APPLICATION TO FIRST SALES.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to any natural gas solely by reason of any first sale of such natural gas.*

[(B) COMMITTED OR DEDICATED NATURAL GAS.—Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, for purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act and which is—

[(i) high-cost natural gas (as defined in section 107(c) (1), (2), (3), or (4) of this Act);

[(ii) new natural gas (as defined in section 102(c) of this Act); or

[(iii) natural gas produced from any new, onshore production well (as defined in section 103(c) of this Act).]

[(C)] *(B)* AUTHORIZED SALES OR ASSIGNMENTS.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

(i) authorized under section 302(a) or 311(b); or

(ii) pursuant to any assigned authorized under section 312(a).

[(D)] *(C)* NATURAL-GAS COMPANY.—For purposes of the Natural Gas Act, the term "natural-gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of [subparagraph (A), (B), or (C)] *Subparagraph (A) or (B)* of this paragraph.

[(E) CERTAIN ADDITIONAL NATURAL GAS.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act and which is not subject to a maximum lawful price under subtitle A of title I by reason of section 121(f), effective as of the date such gas ceases to be subject to such maximum lawful price.]

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(b) CHARGES DEEMED JUST AND REASONABLE.—

(1) SALES.—

[(A) FIRST SALES.—Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

[(i) such amount does not exceed the applicable maximum lawful price established under title I of this Act; or

[(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to subtitle B of title I of this Act.]

(A) FIRST SALES.—Except as otherwise provided in this subsection, for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable.

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(D) ASSIGNMENTS.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid pursuant to the terms of any contract with respect to that portion of which the Commission has authorized an assignment authorized under section 312(a) shall be deemed to be just and reasonable [if such amount does not exceed the applicable maximum lawful price established under title I of this Act].

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SEC. 602. EFFECT ON STATE LAWS.

(a) [AUTHORITY TO PRESCRIBE LOWER] *AUTHORITY TO PRESCRIBE* MAXIMUM LAWFUL PRICES.— Nothing in this Act shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State [which does not exceed the applicable maximum lawful price, if any, under title I of this Act].

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